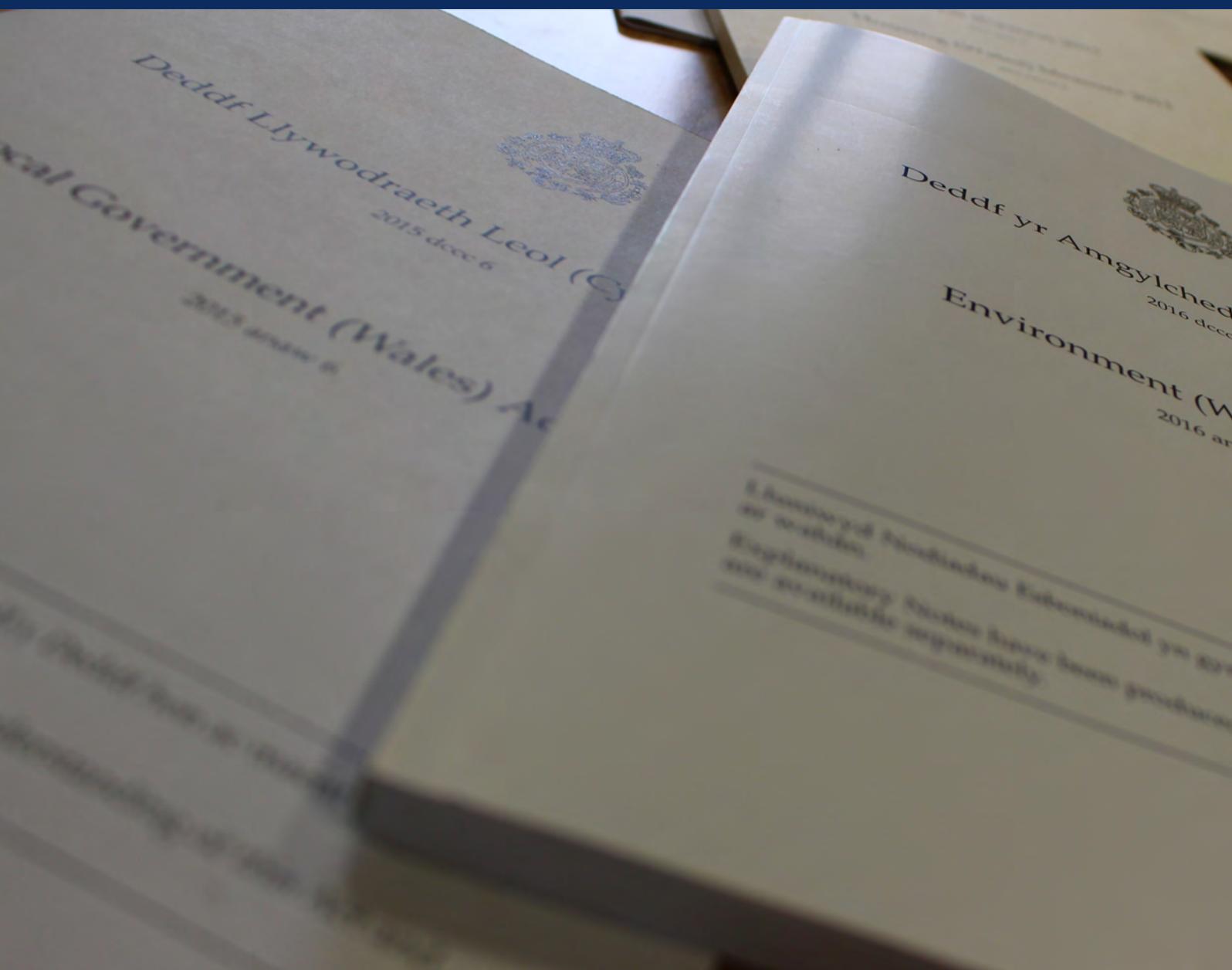


Financial implications of the Legislation (Wales) Bill

March 2019



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Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6565**

Email: **SeneddFinance@assembly.wales**

Twitter: **[@SeneddFinance](https://twitter.com/SeneddFinance)**

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About the Committee

The Committee was established on 22 June 2016 to carry out the functions of the responsible committee set out in [Standing Orders](#) 18.10, 18.11, 19 and 20 of the National Assembly for Wales.

Under Standing Orders 19 and 20, the committee's responsibilities include considering any report or document laid before the Assembly concerning the use of resources, or expenditure from the Welsh Consolidated Fund. This includes undertaking [budget scrutiny of the bodies directly funded from the Welsh Consolidated Fund](#).

Under Standing Orders 18.10 and 18.11, the committee's responsibilities include [oversight of the governance of the Wales Audit Office](#), as set out in the [Public Audit \(Wales\) Act 2013](#).

The committee also considers any proposals for, and the progress of the [devolution of fiscal powers to Wales](#) as part of its responsibilities.

The committee may also [scrutinise legislation introduced to the Assembly](#).

Committee Chair:



Llyr Gruffydd AM

Plaid Cymru
North Wales

Current Committee membership:



Rhun ap Iorwerth AM

Plaid Cymru
Ynys Mon



Alun Davies AM

Welsh Labour
Blaenau Gwent



Neil Hamilton AM

UKIP Wales
Mid and West Wales



Mike Hedges AM

Welsh Labour
Swansea East



Rhianon Passmore AM

Welsh Labour
Islwyn



Nick Ramsay AM

Welsh Conservatives
Monmouth

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Introduction

1. The **Legislation (Wales) Bill** (the Bill) and **Explanatory Memorandum** (EM) was introduced by the Counsel General, Jeremy Miles AM on 3 December 2018.

2. The Explanatory Memorandum accompanying the Bill stated:

“The purpose of the Legislation (Wales) Bill is to make Welsh law more accessible, clear and straightforward to use. It 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.”¹

3. The Finance Committee (the Committee) took evidence on the financial implications of the Bill from the Counsel General on **17 January 2019**.

4. Policy scrutiny of the Bill is being undertaken by the **Constitutional and Legislative Affairs Committee**.

Background to the Bill

5. The Bill has been developed following a number of inquiries and consultations, including the previous Constitutional and Legislative Affairs Committee’s report **Making Laws in Wales**, October 2015, which made 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 **Interpretation Act 1978** (1978 Act).

6. In 2016 the Law Commission published its report, **Form and Accessibility of the Law Applicable in Wales**, which recommended that the Welsh Government 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.

7. There are four parts to the Bill:

- Part 1 imposes duties on the Counsel General to the Welsh Government and the Welsh Ministers relating to the accessibility of Welsh law.

¹ Explanatory Memorandum, page 9

- 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 power 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 National Assembly for Wales, 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.

8. The Counsel General said that the purpose of the Bill is to:

“ensure that Welsh law, over a period of time, becomes more accessible and clearer for people who use it in a professional context—or the ambition is that it should be accessible to people using it as Welsh citizens.”²

9. He added:

“In terms of the financial issues and value for money, one of the main drivers for this is efficiency. At the moment, the statute book is very complex in terms of primary legislation as well as subordinate legislation, and finding the law is difficult, and understanding it when you do find it is also difficult.”³

10. In relation to the timing of the Bill, especially giving the uncertainties that Wales faces around Brexit, the Counsel General said:

“The Law Commission has been encouraging us to do this for quite some time, because of the complexity of the situation we face. The Bill was based on work that they had done, so we had developed resources to draw on as a result of their work, and also, if you look at the context of Brexit—perhaps the main source of pressure on things generally at the moment—one of the things that will happen as a result of Brexit is

² RoP, paragraph 7, 17 January 2019

³ RoP, paragraph 9, 17 January 2019

more complexity in the law rather than less, and therefore the principles underpinning this Bill do counteract that and encourage us to ensure, even in light of that, that the accessibility of law is at the top of our agenda.”⁴

⁴ RoP, paragraph 10, 17 January 2019

1. Financial Implications of the Bill

11. The overall cost of the Bill falls within the range of £2.962 million to £2.984 million. The Regulatory Impact Assessment (RIA) outlines 2.942 million in recurrent costs and a range between £20,000 to £42,000 for transitional costs. The costs have been appraised over five years (2019-20 to 2025-26).⁵

12. The **Impact Assessment** that accompanied the Law Commission's report suggested that benefits of £23.75 million could be generated annually. This included:

“On-going benefits: Annual savings from reduced research by legal practitioners: £23.56m [best estimate]; Improved capacity for legal access by non-legal civil society [time savings]: £0.19m [best estimate].”⁶

13. The EM 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.”⁷

14. The RIA suggests that by ensuring the long term accessibility of Welsh law there would be 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”. The RIA goes on to suggest that it will promote greater confidence in the law for businesses, Government and citizens, “leading to more confident and more efficient decision-making across all part of the civic society and the private sector”.⁸

⁵ Explanatory Memorandum

⁶ Law Commission's Report, **Form and Accessibility of the Law Applicable in Wales**

⁷ Explanatory Memorandum

⁸ Explanatory Memorandum

Evidence from Counsel General

15. The Counsel General said that to quantify the benefits of the Bill he had used the Law Commission’s Impact Assessment as “a starting point”. However, the main driver for the Bill was social justice and ensuring that “people can access the law, particularly in a context where legal aid is being cut”⁹.

16. The Counsel General said that any organisation using the statute book would benefit from this legislation as “time that’s spent in locating the law and interpreting the law is time that’s not spent...applying the law”.¹⁰

17. He went on to explain that given the complexity of Wales’s devolved settlement “we do have a specific challenge here in Wales”. He added:

“So, there is a great deal of time wasted in people searching for law when they could be using their time more constructively, rather than simply scrolling through documents.”¹¹

18. The Committee raised concerns that legislative resource committed to the objectives of the Bill may impact resourcing of Brexit related matters. The Counsel General explained that the Bill was important in addressing potential legislative complexities arising from Brexit. He said:

“The benefits to this can accrue as a consequence of some of the challenges we face in Brexit. Brexit will complexify the law even further, and this is a programme that enables us to make the law more straightforward in the longer term.”¹²

19. In terms of post-implementation review of the legislation, the Bill includes review mechanisms. The Counsel General confirmed:

“The Bill itself is a Bill to keep the law under review. So, that includes within it a review of the efficacy of the Bill in delivering that outcome, essentially. And the benefit—well, there are many benefits, but one of the benefits of having a duty is that it provides the ability for scrutiny, obviously, and accountability and review. And the financial assumptions currently envisage three reports over the course of an Assembly term—formal reports to the Assembly on where we are with the programme,

⁹ RoP, paragraph 14, 17 January 2019

¹⁰ RoP, paragraph 19, 17 January 2019

¹¹ RoP, paragraph 9, 17 January 2019

¹² RoP, paragraph 32, 17 January 2019

which will obviously have been published. But I envisage perhaps more frequent, you know, oral reports in the Chamber, or statements, and opportunities for Members to hold the Counsel General to account.”¹³

Committee view

20. While the Committee accepts that cost savings are not a driver for the Bill, efficiencies in the legal system are explicitly identified as a benefit and reason for introducing the legislation. Due to the prominence of efficiencies in the reasoning for the Bill, the Committee would expect to see further analysis, either building on or independent of, the Law Commission’s work in this area.

21. The Committee recognises the importance that post-implementation review of legislation has in ensuring objectives of legislation are being delivered in line with expectations. The Committee is pleased to see mechanisms within the Bill that allow for regular review of implementation, this review should consider resourcing and financial implications to ensure value for money is delivered.

Conclusion 1. The Committee is concerned about the timing of this Bill when so many uncertainties remain around Brexit. The Committee is concerned that the Welsh Government is committing resources to this Bill at a time when a significant legislative resource will be needed to deal with the outcome of Brexit. However, the Committee accepts that implementation of the Bill will be of benefit when considering any legislative changes due to Brexit.

Recommendation 1. The Committee recommends the Welsh Government undertakes further work on analysing and costing the efficiencies within the Bill, which are identified as a key driver for implementing the legislation and includes this information in a revised Regulatory Impact Assessment.

Recommendation 2. The Committee recommends that relevant review activity associated with the Bill consider the resourcing and financial implications of delivering the Bill’s objectives.

Part 1: Accessibility of Welsh law

22. 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 (£588,000 per annum, £2.942 million over five years).

¹³ RoP, Paragraph 137, 17 January 2019

23. The annual cost of £588,000 is made up of:

- drafting resource (equivalent to four Legislative Counsel). The Welsh Government note that work on the scale required “could not be absorbed into normal business and would require dedicated resourcing”. This team would deliver a consolidation bill approximately once a year for five years - £377,000;
- translation resource (equivalent to two Legislative Translators) - £93,000;
- one management band 2, two management band 3 to deliver programme, which could include development of Law Wales website, further publication of the law and use of emerging technologies in that task - £119,000.

Evidence from Counsel General

24. The Counsel General confirmed that the only functions imposed by the Bill are in Part 1, and they would all fall on the Welsh Government. He added:

“Part 2 obviously imposes obligations, or affects other devolved authorities rather, but in fact that doesn’t impose specific duties on them to act in a particular way. So, in that sense, I don’t think Part 2 does that either.”¹⁴

25. The largest ongoing cost is to resource the team of legislative counsel (£377,000). The Committee questioned the Counsel General as to how he would ensure sufficient resources are made available to this Bill given the pressures on Welsh Government’s legal staff dealing with Brexit. He said:

“The purpose of the duty in the first part of the Bill is, effectively, to make sure that resources are deployed to this task.”¹⁵

26. He continued:

“the point of committing the resources is to give sufficient visibility to be able to recruit legislative counsel to do the work, essentially. So, that is the point of getting the visibility on the resource. I completely understand your perspective, which is to say, on the existing staff base, this is not achievable, and that’s correct. It’s achievable on a piecemeal basis, but that is the sort of thing that you would see, perhaps, being, for

¹⁴ RoP, paragraph 62, 17 January 2019

¹⁵ RoP, paragraph 27, 17 January 2019

obvious reasons, dislocated by Brexit. But the point is to be able to commit to taking on legislative counsel to do that.”¹⁶

27. The RIA also noted that administrative team would receive some input and support from policy colleagues and advisory lawyers at Welsh Government, but no additional costs had been identified in relation to this.¹⁷

28. The Committee asked why the resource requirement placed on other teams within Welsh Government, had not been costed in the RIA. The Counsel General said:

“So, the principal resource challenge is going to be a drafting resource challenge. That’s the large part of it, given the nature of the work. There’ll be a set of Standing Orders, which enable the Assembly to scrutinise, but in a different way than the Assembly would scrutinise a reform Bill. So, the large part of work will be done on that basis, but there obviously will be work that policy colleagues will need to engage with, but that’s in the nature of any piece of legislation that is being developed, essentially.”¹⁸

29. The Counsel General also advised that there may be a cost to private sector bodies in understanding the new law. However, this is not costed in the RIA. In relation to this point the Counsel General said:

“It would be a one-off cost in that sense of learning what the new law says, but it’s the sort of thing that you would expect to be a very minor part of anyone’s day job, in a sense. You know, ‘What does this say? How does that relate to legislation being passed in future?’ It’s just being current in the law, essentially, so, in that sense, it’s de minimis, I’d say.”¹⁹

30. In relation to the £20,000 range in the overall cost of the Bill, the official accompanying the Counsel General confirmed:

“The range cost relates to the variables in laying the programme, reporting on the programme and revising the programme, which depends on how the Assembly scrutinises the Bill, and whether a revision is necessary. The precise cost relate to the estimated costs of staffing the legislative counsel, the translators and the administrative

¹⁶ RoP, paragraph 30, 17 January 2019

¹⁷ Explanatory Memorandum

¹⁸ RoP, paragraph 116, 17 January 2019

¹⁹ RoP, paragraph 65, 17 January 2019

staff based on a speculative programme of four to five Bills. The precise details of the programme would be for each Assembly.”²⁰

31. The Counsel General added:

“What this does, clearly, is to set the obligation to have a programme, but the nature and content and, frankly, the scale of ambition of that programme are matters for the Government of the day looking at the other priorities, essentially.”²¹

Committee view

32. The Committee notes the majority of costs to the Bill relate to legislative resource associated with the activities in Part 1 of the Bill. While the Committee accepts it is difficult to cost all aspects of minor impacts of the legislation on Welsh Government staff, the Committee would like to understand more fully the implications for other staff in the Welsh Government.

33. The Committee notes from the Counsel General’s evidence that there is likely to be an impact on other bodies including private sector organisations in terms of learning what the new law says and the Assembly in terms of establishing a new Standing Order to scrutinise consolidation Bills. The Committee is conscious that this may result in additional costs for these bodies and whilst the Counsel General referred to costs for private bodies as “de minimis” there is little evidence and analysis of this in the RIA.

Recommendation 3. The Committee recommends the Welsh Government provide further information on the financial implications for policy staff not costed in the Regulatory Impact Assessment and costs to other bodies. This information should be included in a revised Regulatory Impact Assessment.

Part 2 and 3: Interpretation and operation of Welsh law – Transitional costs

34. The Bill intends to develop new bilingual and modern interpretation provision that will apply to Welsh law. The EM states:

“The Bill if enacted would not only address the absence in the Welsh language of the definitions of commonly used words and expressions that are set out in Schedule 1 to the 1978 Act, but would also comprise

²⁰ RoP, paragraph 76, 17 January 2019

²¹ RoP, paragraph 78, 17 January 2019

wider rules on the interpretation and operation of the law similar to those in the 1978 Act.”²²

35. The EM notes:

- Preparation and delivery of guidance – The Welsh Government will develop and publish non-statutory guidance for drafters of subordinate legislation, this would coincide with the coming into force of the interpretation provisions (intended for 1 January 2020). The Welsh Government will incur costs of £5,000 in 2019-2020 and would absorb this within current resources.
- Informing those administering the law of the changes: The Welsh Government will need to make stakeholders and users aware of the change brought about by the Bill.

Evidence from Counsel General

36. In relation to the £5,000 transitional cost, the Counsel General said:

“There is a modest figure, which is really around providing guidance to professionals, essentially, about what Part 2 does. I’m not envisaging the public at large being informed differently, particularly, from that. I think the key point is to make sure that the people who operate the provisions and these are default provisions in law, really, aren’t they, the professions and people giving legal advice, understand the changes, and that’s really the target.”

37. The official accompanying the Counsel General said one of the functions of the administrative team would include maintaining and developing the Law Wales website and working with the National Archives to update legislation.gov.uk. She added:

“In the past, the Counsel General has spoken about the problems of the fact that the Welsh language text on that website [legislation.gov.uk] is not as up to date, in many forms, as the English language text. So, it’s about working with them to ensure the Welsh legislation is edited and updated. And then in the Counsel General’s written statement towards the end of last year, he talked about organising the existing law by subject area, and that would be a key part of the work of this

²² Explanatory Memorandum

administration team, making sure that legislation.gov.uk is organised by subject in relation to the law applicable to Wales.”²³

38. In terms of utilising technology to deliver the objectives of the Bill, the Counsel General said:

“When I appeared before the Constitutional and Legislative Affairs Committee, I spoke briefly about the discussions we’ve been having with Google and with other technology providers just to understand the range of future options in some of this work. Obviously, it’s important to make sure that the resources that we deploy today are, as far as any of us can gauge, fit for the future.”²⁴

Committee view

39. The Committee notes the £5,000 transitional cost which will be used to provide guidance to professionals on the impact of the Bill. The Committee has concerns that no other publicity activities have been included in the Bill, and would anticipate that wider public engagement would be required to generate the benefits the Welsh Government anticipates. This is especially pertinent at a time when legal aid is being cut and there may be a greater need for the general public to access Welsh laws.

Recommendation 4. The Committee recommends the Welsh Government provide further information to the Finance Committee on how it intends to publicise the Bill, if enacted.

²³ RoP, paragraph 107, 17 January 2019

²⁴ RoP, paragraph 110, 17 January 2019