# WRITTEN STATEMENT

# BY

# THE WELSH GOVERNMENT

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| **TITLE**  | **Independence of the Welsh Tribunals** |
| **DATE**  | **21 March 2017** |
| **BY** | **Counsel General** |

Over the past year, in the UK, in Wales and abroad there have been increasing attacks on the integrity and independence of the judiciary and the established basic principles of the rule of law which have become embedded in legal systems across Europe and internationally and adopted by the United Nations. This independence and these principles are embedded in our legal system by the Constitutional Reform Act 2005. References to our courts, our judges and judicial system by the use of phrases such as “bad judges”, “kangaroo court”, “unelected judges”, “enemies of the people” have been published in newspapers, in social media and in public commentary which collectively have the effect of undermining the fundamental principles of the rule of law which underpin our democratic system of government and administration of justice.

In the aftermath of the High Court ruling on the commencement of Article 50, the Lord Chancellor was rightly criticised for failing to defend the independence of the judiciary against the condemnation of certain sections of the media, politicians and others whose behaviour displayed a casual disregard for the rule of law. I, along with other members from across the political spectrum in the National Assembly, joined that criticism. As Wales’ Law Officer, I will ensure that the integrity of Wales’ own developing judicial system is respected.

Since 1999 we have acquired responsibility for a number of tribunals and also established new ones ourselves. The Welsh Tribunals, defined in the Wales Act 2017, comprise the Adjudication Panel for Wales, the Agricultural Land Tribunal for Wales, the Mental Health Review Tribunal for Wales, the Residential Property Tribunal for Wales, the Special Educational Needs Tribunal for Wales and the Welsh Language Tribunal.

Responsibility for the judiciary of the Welsh Tribunals is exercised through a combination of the functions of the Welsh Ministers and the Lord Chancellor. Since 2015, where the Welsh Ministers have the formal responsibility for appointments, the recruitment of tribunal members, who may be legal or lay members, has been conducted by the independent Judicial Appointments Commission (JAC). Whilst the formal appointment of members is made by the Welsh Ministers, they are made on the recommendation of JAC. This mirrors arrangements for the JAC to conduct recruitment of court and tribunal judiciary on behalf of the Lord Chancellor. Members will be aware that a bespoke recruitment process is in place for the Welsh Language Tribunal where the Welsh Ministers are required by the regulations to have regard to the need to uphold the principles of independence of the Tribunal and the rule of law in the appointment of its members.

On 7 March the Leader of the House, in response to a question about the Adjudication Panel for Wales, confirmed that the Welsh Ministers have no role in decisions of the Tribunals which are determined by tribunal members solely on the basis of the evidence before them. Other safeguards are in place to uphold the judicial independence of the Welsh Tribunals, including access to the expertise of the Judicial Conduct Investigations Office. The Wales Act 2017 makes provision for a President of Welsh Tribunals to further strengthen judicial independence and leadership.

As a government, we highly value and respect the work of the Welsh Tribunals’ judiciary. We recognise their integrity and commitment to public service and the important role they play in Wales. As the Welsh judicial system continues to develop and grow, as we move in due course to a more distinct legal jurisdiction, further reform of the administration of justice will become necessary. It will increasingly be a test of this Assembly’s maturity as a legislature and Parliament that it recognises and understands the importance of the independence of its judicial institutions and the principles on which they are founded and operate. It is equally important that our judicial institutions know that they command the confidence of the legislature and the people of Wales and that they are defended from political interference, unwarranted and unsubstantiated attacks and criticism in the exercise of their public responsibilities.