Impact

The Law Society’s submission to the Commission on Justice and the potential impact of a separate legal jurisdiction was discussed by Conservative AM, Janet Finch-Saunders and Jeremy Miles, the Counsel General, at this month’s Counsel General Questions. Potential roles for the Law Society were mentioned throughout an oral evidence session and written evidence from Jonathan Haydn-Williams for the Commission on Justice. Evidence from the Law Society was also mentioned throughout the Stage 2 scrutiny of the Legislation (Wales) Bill by the Constitutional and Legislative Affairs Committee.

Legislation

Legislation Bill
The Legislation (Wales) Bill passed Stage 2 scrutiny by the Constitutional and Legislative Affairs Committee. A summary of these proceedings in which the Law Society were cited several times can be found below. Counsel General, Jeremy Miles, also responded to the recommendations of the Constitutional and Legislative Affairs Committee’s Stage 1 report on the Legislation (Wales) Bill and shared correspondence from the Solicitor General on it.

Smacking Ban
The Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill is currently before the Children, Young People and Education Committee. The Committee has heard evidence from healthcare providers, local authorities, police, those involved in safeguarding and children’s rights campaigners. Witnesses have been generally positive about the proposals so far, stating that they will provide clarity around which positive parenting messages can be promoted.

Duty of Candour
The Health and Social Care (Quality and Engagement) (Wales) Bill which will create a duty of candour for healthcare professionals, intended to improve transparency in the NHS, will be introduced by the Health Minister on Tuesday, June 18.

Royal Assent
The Renting Homes (Fees etc.) (Wales) Bill, Public Services Ombudsman (Wales) Bill have both been given Royal Assent and are now Acts.

Legal Sector

Legal Jurisdiction
There was a lengthy exchange at this month’s Counsel General Questions in which Conservative AM Janet Finch-Saunders asked the Counsel General about the potential impact of the creation of a Welsh legal jurisdiction on lawyers. Jeremy Miles told AMs that he will await the outcome of the Commission on Justice, but he pointed out that the Welsh Government has advocated the creation of a Welsh legal jurisdiction for constitutional and practical reasons. He said a Welsh legal jurisdiction would benefit Welsh lawyers “or at the very least have a neutral effect”.

Ms Finch-Saunders highlighted the Law Society’s submission to the Commission on Justice, which noted that the complete separation of Wales from the current single jurisdiction “could dilute the jurisdiction of England and Wales and curtail the ability of solicitors to maintain the current level of legal services
activity in Wales”. Warning that Wales could be perceived as a difficult place to do business, she called for assurances for an estimated 450 law firms and 4,000 law students. The Conservative AM urged the Commission to explore a jurisdictional solution as well as pursuing complete jurisdictional separation.

Jeremy Miles said the Law Society’s submission “represents an evolution of their position”, adding: “Although it does identify some of the concerns that are very well understood in relation to the jurisdictional issue and the existence of a separate jurisdiction, my reading of it is that it moves further towards an understanding and an acknowledgement of some of the benefits that set of arrangements could bring.” The Counsel General agreed with the Law Society’s recommendation that the government should be proactive in developing a jurisdictional solution to the accommodation of Welsh law and the distinct needs of Wales. He also endorsed the professional association’s warning about creating barriers.

Mr Miles said the Bar Council’s submission was also supportive of the Welsh Government’s position. He told the Siambr that there is no need to assume that dual qualification would be an issue, saying instead that it will be an advantage for lawyers in Wales. He also raised the role of the rapid review of the Welsh Government’s support for the sector.

Alun Davies asked whether the Welsh Government has plans to submit further evidence to the Commission. Mr Miles confirmed that he plans to supply further evidence following visits to Northern Ireland and Scotland.

Janet Finch-Saunders asked for an assessment of the enforcement of legislation across Wales. Jeremy Miles said the responsibility to enforce Welsh-made legislation largely lies with the government and its agencies. He said the Welsh Government’s approach is to promote behavioural change and collaboration.

Legal Team
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Vacancy
The Welsh Government advertised for an assistant legislative counsel.

Justice System

Justice Blueprints
Jane Hutt outlined the new youth justice and female offending “blueprints”, which have been developed with the Youth Justice Board Cymru and HM Prison and Probation Service. She told AMs that people who enter the criminal justice system are often some of the most vulnerable and disadvantaged in society. The Deputy Minister and Chief Whip warned that too often people are caught up in the system because they have been failed earlier in their lives, suffering multiple adverse childhood experiences (ACEs). The Deputy Minister said the future approach will have a focus on early intervention and prevention. She added that the Welsh Government will take a rehabilitative approach to those who slip through the net.

Youth Justice
Jane Hutt also issued a statement on the Western Bay Youth Justice and Early Intervention Service, outlining actions taken since the publication of the HM Inspectorate report.
Justice Commission

A summary briefing on the Commission’s online information gathering exercise was published, as was the following oral evidence:

- Legal practice in Wales (Law Society mentioned)
- Administrative justice
- Tribunals in Wales

Written evidence was also published from:

- Jonathan Haydn-Williams (Law Society referenced)
- Cymdeithas Cyfieithwyr Cymru
- School of Law and Politics at Cardiff University

Finance and Taxation

Capital Funding

The Finance Committee began an inquiry into the Welsh Government’s capital funding sources. AMs took evidence from academics who appraised them of the various options and their advantages and disadvantages. The Scottish Futures Trust talked about the model in Scotland while representatives of KPMG and Capital Law spoke about the importance of working in partnership with the private sector. Three more meetings on this topic are planned with evidence provided by accountants, auditors, local government and the Welsh Government before the summer recess. A report will then be published in the early autumn.

Vacant Land

Questioned on preparations for the vacant land tax, Rebecca Evans explained that the Welsh Government is negotiating devolution of competence with HM Treasury and that timescales are not entirely in its control, adding that she hoped powers will be devolved this year.

Revenue Authority


Income Tax

Rebecca Evans highlighted an HMRC error in the issuing of new tax codes, saying some taxpayers living in Wales received a Scottish ‘S’ code and paid Scottish rates of income tax in April. She confirmed any mistakes would be rectified by HMRC.

Planning and Housing

Renting Homes

Renting Homes: Julie James highlighted a consultation on two sets of regulations under the Renting Homes (Fees etc.) (Wales) Act 2019. The consultation ends on July 19.
Planning
Julie James announced that officials have been instructed to start work on a dedicated planning inspectorate for Wales. She also highlighted the publication of the Welsh Government’s interim response to the Law Commission’s report on planning law. Plaid Cymru responded to the announcement.

Ministerial Decisions
The Welsh Government published a chart of all planning decisions which have been called in and their current status.

TAN 1
The Petitions Committee considered a petition calling for the revision of TAN 1. The committee published correspondence from Julie James and the petitioner. The committee agreed to write to Julie James to attend a committee meeting to discuss several planning issues.

TAN 15
In answer to a written question, the Minister confirmed she planned to issue a revised TAN 15 alongside a draft National Strategy for Flood and Coastal Erosion Management before the summer recess. Both will be subject to a 12-week consultation.

Housing

Building Safety
Julie James set out a series of measures the Welsh Government intends to take to improve fire safety in residential properties, accepting all the recommendations of the Building Safety Expert Group. Ms James said the retrofitting of sprinklers continues to be a major component of the Welsh Government’s approach. David Melding expressed concern over a lack of a clear project plan from the Welsh Government. Julie James said the Government was taking time to work through the complex factors to ensure a coherent system. Helen Mary Jones asked if the installation of sprinklers could be mandated through legislation. Julie James reiterated that this was a complex issue.

Holiday Homes
Calling for a statement, Siân Gwenllian told AMs that nine councils are now of the view that the Welsh Government needs to address an anomaly which means that some holiday homeowners do not pay taxes. Rebecca Evans said the Welsh Government will look at ways to tighten the rules.

Estate Management Charges
Hefin David asked for a statement on the progress of the Welsh Government's ministerial task-and-finish group on leasehold reform. Julie James said the task-and-finish group will report this summer and will compliment work of the Law Commission and the Unadopted Roads taskforce. Hefin David said he has met with the Chartered Institute of Housing Cymru who are feeding into the group, noting issues of estate management charges in his constituency. He asked if estate management charges will be dealt with. Ms James said the group is looking at this issue, also noting work on wider leasehold reform. She said it is important to ensure that people do not face fees they were not anticipating.
M4 Relief Road

Statement
The First Minister, Mark Drakeford, will make a statement setting out his decision on whether or not to proceed with the M4 project on Tuesday, June 4.

Brexit

Brexit
In the wake of a poor European Parliamentary Election result, First Minister Mark Drakeford stated that it was now the official policy of Welsh Labour to put any final decision to the people in a referendum. He added that Welsh Labour would continue to campaign for remaining in the EU. Jeremy Corbyn conceded that he too would back a public vote on the deal but emphasised the need to work towards a good deal first.

Before the European election, Jeremy Miles warned that a “softer” Brexit looked less likely after talks between the Conservatives and Labour broke down. Leading the Welsh Government’s weekly press conference, the Brexit Minister urged MPs to take control of the process and steer the country towards a close relationship with the EU. Mr Miles also issued a written statement on the Joint Ministerial Committee (EN) meeting held on May 9. The Assembly Research Service published Brexit: a legislation update.

Devolution

Constitution
Jeremy Miles argued that the time is right to consider fundamental constitutional change post-Brexit. The Counsel General for Wales argued that Brexit needs to result in stronger forms of devolution and substantially enhanced powers for the Welsh Government.

Devolution
Mark Drakeford addressed the Institute for Government, arguing that the UK Government must make changes to catch up with devolution.

Assembly News

Polling
A Welsh Political Barometer conducted in the third week in May projected Welsh Labour’s worst-ever performance at a National Assembly election. Under the YouGov poll, Labour would lose nine seats, with the Brexit Party gaining 13 and the Greens, who have never returned an AM before, securing five. Plaid Cymru would pick up Neath, Cardiff West and Llanelli, unseating First Minister Mark Drakeford, Counsel General Jeremy Miles – who has been tipped as a future Welsh Labour leader – and the Deputy Minister for Economy and Transport, Lee Waters. The voting intention projections would generate the following result in 2021:

- Labour: 20 seats (19 constituency, 1 regional)
- Plaid Cymru: 13 seats (12 constituency, 1 regional)
- Brexit Party: 13 seats (13 regional)
- Conservatives: 7 seats (7 constituency)
Greens: 5 seats (5 regional)
Liberal Democrats: 2 seats (2 constituency)

Brexit Party
Elin Jones wrote to Mark Reckless confirming that the Brexit Party meets the requirements to form a group in the National Assembly for Wales. This decision means that the four Brexit Party AMs (Mark Reckless, Mandy Jones, Caroline Jones and David Rowlands) will now be able to access more resources and be given more opportunity to question ministers.

Committee Membership
AMs voted down a motion to elect the Brexit Party’s Caroline Jones as a member of the National Assembly’s Business Committee.

Legislation (Wales) Bill – Stage 2 Proceedings

Constitutional and Legislative Affairs Committee – Monday, May 13

Legislation (Wales) Bill – Stage 2 Proceedings

Marshalled List of Amendments
Legislation (Wales) Bill (as amended at Stage 2)

Group 1: Definitions in Part 1 of the Bill
Dai Lloyd moved amendments 18 and 19, which expand on the meaning of “accessibility of Welsh law” to the lay person. He argued that it should include: the availability of up-to-date Welsh law; the navigability of Welsh law; the clarity and certainty of effect of enactments that form Welsh law; the utilisation of technology to make Welsh law freely available to the public; and the availability of commentary. Suzy Davies explained that amendments 14 and 15 relate to clarity, saying she is uncomfortable that too much will be left to the courts to decide the legislature’s intention. She urged the Welsh Government to consider including definitions of “consolidating” and “codifying” Welsh law because witnesses did not have a universal view of the meanings.

Jeremy Miles said the Bill does not use the word “accessibility” on the basis that the general meaning is well understood and trying to provide a comprehensive explanation of all the elements could be difficult. He told AMs that he does not oppose including a provision that gives some examples of what will be included in the phrases “accessibility of Welsh law”, but he would like to further consider the specific drafting. Mr Miles committed to working with Dr Lloyd to bring the amendments forward at Stage 3.

Turning to the Conservative amendments, the Counsel General said he does not agree that the Bill should define the two terms. He said there is no need to define the term “consolidation” because its general meaning is straightforward, adding that it has already been used in legislation such as the Law Commissions Act 1965. Mr Miles said the Assembly’s standing orders will provide opportunity for a more detailed definition when the consolidation of primary legislation is being considered. On “codification”, Mr Miles said he agrees with the chair of the Law Commission, who warned that trying to be prescriptive could be limiting. He said he will set out a position statement on consolidation, codification and the future structure of the law in the summer.
Dr Lloyd withdrew amendments 18 and 19 considering the Counsel General’s comments on collaboration.

Amendments 14 and 15 fell.

**Group 2: Programme to improve accessibility of Welsh law**

Suzy Davies moved amendments 12 and 13, which speak to recommendation eight of the committee’s [report](#) and seek to oblige the government to “put its money where its mouth is”. She told AMs that the motivation behind the amendments was the introduction of the School Standards and Organisation (Wales) Act 2013. She explained that the legislation put a duty on councils to prepare Welsh in Education Strategic Plans, but the then-minister opposed an obligation to implement them, “so huge resources were committed to prepare these plans which, in some of those authorities, ended up in the bin”.

Jeremy Miles said the Welsh Government’s amendments in the group – amendments 1, 2 and 3 – give effect to recommendation nine of the committee’s report, adding proposed activities to promote awareness and understanding of Welsh law as a duty under Section 2(3) rather than being discretionary under Section 2(4). He said amendment 3 provides that the Counsel General reports on the programmes annually.

Amendments 1, 2 and 3 were agreed.

On the Conservatives’ amendments, Mr Miles argued that deciding whether enough progress has been made under the programme will inevitably be a subjective question and should be subject to a set of political considerations rather than legal considerations. The Counsel General pointed out that measures set out in the programme will not entirely be within the government’s gift because the legislature will ultimately decide whether to pass consolidation legislation. In closing, Mr Miles addressed points raised by Public Law Wales and the [Law Society](#), “which was to say that without that duty to implement what the government might put forward would amount to a wish list”. He stressed that it is not the intention and the government is committed to improving accessibility. He argued that the amendments could have a dampening effect on future governments, discouraging them from bringing forward ambitious programmes.

Amendments 12 and 13 fell.

**Group 3: Application of Part 2 of the Bill**

Suzy Davies explained that amendments 16 and 17 deal with the issue of which interpretation rules should apply to wholly Welsh-made secondary legislation made with powers flowing from primary legislation made for Wales or England and Wales by Westminster on devolved matters. She said Welsh-made legislation, including secondary legislation, will be subject to Part 2, but primary legislation made in Westminster will be subject to the Interpretation Act 1978. She said the intention of primary legislation may be compromised if it is implemented through secondary legislation which gives the same words a slightly different meaning.

Raising a letter from Robert Buckland, Jeremy Miles said the Welsh Government does not share the views of the Solicitor General that the Bill is outside the National Assembly’s competence. The Counsel General told committee members that Part 2 of the Bill will not modify any existing subordinate legislation. He accepted that secondary legislation could have a different meaning from primary legislation, but he argued that the point is to ensure that the subordinate legislation is accessible on its own terms. Mr Miles said he
does not agree that the powers of Parliament to legislate for Wales is affected in any way by the application of Part 2. He argued that Welsh-made secondary legislation ought to diverge in the context of devolution.

Amendments 16 and 17 fell.

**Group 4: Equal status of texts of bilingual legislation**
Jeremy Miles moved amendments 4, 5, 7 and 11, which will insert provisions dealing with the issue of equal status of the Welsh and English languages in legislation. He said one of the purposes of the Bill is to facilitate the use of the Welsh language and provide more impact to the equal status. He said the lead amendment, 5, inserts a new section that restates the provision of the equal status of Welsh- and English-language texts from Section 156(1) of the Government of Wales Act 2006. Mr Miles said it make sense to include it on the face of the Bill because it includes other provisions on interpretation and implementation. He told AMs that amendment 4 ensures that the new section applies in all cases. He said amendment 11 inserts new provisions in Schedule 2 and makes consequential amendments to Section 156 of the 2006 Act to avoid overlap. He said the amendment will do away with subsections 2 through 5 of Section 156.

Amendments 4, 5, 7 and 11 were agreed.

**Group 5: Definitions of words and expressions**
Jeremy Miles said amendments 9 and 10 make technical changes to the drafting of two of the definitions in Schedule 1. He added that the amendments do not change the effect of the Bill, but rather seek to ensure that its effect is expressed more simply. He explained that amendment 9 changes the part of the definition of Wales that refers to the sea to make it more consistent with the Government of Wales Act. Mr Miles told the committee that amendment 10 removes “unnecessary” wording from the definition of writing.

Amendments 9 and 10 were agreed.

**Group 6: Power to replace descriptions of dates and times in Welsh legislation**
Mr Miles said amendment 6 extends the power in Section 36 of the Bill and amendment 8 is consequential and removes a provision that would not be needed. He explained that Section 36 enables Welsh Ministers to amend legislation by replacing a description of the date or time with the actual date or time once it is known. Mr Miles cited the example of a reference to the date on which an Act comes into force, saying it could be replaced by the actual commencement date once it is set.

Amendments 6 and 8 were agreed.

**Next Steps**
Mr Miles told committee members that he will table a revised explanatory memorandum ahead of Stage 3 to reflect the work of the Finance Committee and the Constitutional and Legislative Affairs Committee. Ahead of Stage 3 proceedings, the Counsel General said he intends to table technical amendments to Part 2 of the Bill, dealing with the interpretation of references to retained EU law after Brexit.