
Welsh Language Scheme

2016 Consultation Response

**A consultation response produced by the
Judicial Appointments Commission**

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Judicial Appointments Commission

Welsh Language Scheme – Consultation Response

Response to consultation carried out by the Judicial Appointments Commission.

This information is at <https://consult.justice.gov.uk/>

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Introduction and contact details

The Welsh Language Act 1993 imposes a duty on public organisations to operate a scheme, and this duty in relation to the JAC has previously been discharged under the Ministry of Justice's umbrella policy. The general objective of Welsh Language Schemes is that the Welsh and English languages should be treated on the basis of equality, as far as is appropriate and reasonably practical, within the conduct of public business and the administration of justice in Wales.

This document is the post-consultation report for the consultation paper, 'Judicial Appointments Commission – Welsh Language Scheme'.

It covers:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- next steps following this consultation

Further copies of this report and the consultation paper can be obtained by contacting **Operational Policy** at:

Judicial Appointments Commission
1st Floor, Red Zone

102 Petty France
London SW1H 9AJ

Telephone: 020 3334 4187

Email: communications@jac.gsi.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

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Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Judicial Appointments Commission at the above address.

Background

The consultation paper on the proposed Welsh Language Scheme (the scheme) was published on 9 October 2015 and invited comment on the proposal for a bespoke JAC Welsh Language Scheme.

The Scheme detailed the JAC's current commitments and current standard of service in relation to Welsh language. We undertook development and consultation of the scheme on a voluntary basis in order to better specify how the JAC treats the Welsh and English languages when using our approach to independently assessing candidates' suitability for judicial appointment in Wales. It also explains how we enable candidates to communicate with us through the medium of English or Welsh, according to their personal choice, which we will facilitate at every opportunity so far as is appropriate in the circumstances and reasonably practicable.

Our public consultation was preceded by a period of informal consultation with our delivery partners and interested parties, which included seeking initial advice from the Welsh Language Commissioner's Office on the appropriateness and potential effectiveness of our proposals. We are grateful to those that helped with the development of the pre-consultation draft, including the Ministry of Justice's Welsh Language Co-ordinator; the Judicial Office, HMCTS Judicial Workforce Planning, and the members and secretariat of the Lord Chancellor's Standing Committee on Welsh Language.

The consultation period closed on 4 December 2015 and this report summarises the responses, including how the consultation process influenced the final shape and further development of the policy consulted upon. The Welsh Language Commissioner's Office wrote to us on **10 May 2016** to confirm that they were content with the scheme.

The Welsh language response paper is at <https://consult.justice.gov.uk/>

The final, post-consultation version of the Welsh Language Scheme is published with this consultation response.

A list of respondents is at Annex A.

Summary of responses

1. The consultation paper was sent to stakeholders with an interest in judicial appointments. Ten responses to the consultation paper were received, two of which were in Welsh. Of the 10, half of the responses were from members of the judiciary responding personally or as a representative of a judicial organisation. One was from the Ministry of Justice's Welsh Language Co-ordinator, one on behalf of the Welsh Government and the remaining three from individuals, two of whom were from barristers.
2. Not all of the responses addressed all of the questions, and some respondents wrote in the form of letters or statements expressing opinions that were not confined to the specific questions. Where the responses clearly relate to a particular proposal they have been treated as answers to the questions for the purposes of analysis.
3. Responses were analysed for levels of support among particular groups, suggestions on how the draft provisions could be improved and for evidence of potential impact of the proposals on all responding individuals and organisations. The majority of consultation responses indicated agreement and support with the overall objective of a bespoke JAC Welsh Language Scheme, with many offering constructive improvements, identifying gaps or issues and some offering ongoing support during implementation.
4. On the whole, the responses indicated a large degree of support, with many helpful observations and suggestions for improvement offered.
5. Following the public consultation, a revised Welsh Language Scheme was sent to the Welsh Language Commissioner's Office for any comments and suggestions. The Welsh Language Commissioner approved the Scheme on **10 May 2016**.
6. The Welsh Language Scheme will be implemented with the following amendments to the draft that we consulted on which are largely either technical in nature, or drafting improvements suggested by consultation responses.
7. The questions with the highest rates of answers are summarised as follows:

Do you agree with, or have any comments on, our proposed standard of service?

8. These provisions were broadly welcomed by the majority of respondents, with some suggestions for improving the accuracy of the wording. One respondent answered 'no' to every question without giving further explanation, and are therefore not explored more fully in following summaries.

Do you agree with, or have any comments on, our advertising provisions?

9. Although most responses agreed with the provisions generally, many considered that our intention could be further clarified. There was general recognition, both in terms of the government's general 'digital by default' approach to public services, and also of the nature of how most stakeholders operate, of the increasing digital nature of advertisements.

Do you agree with, or have any comments on, our provisions on other communications and material including general publications and selection exercise materials?

10. Responses to this question were varied in their focus, given the number and range of provisions within this section. Most contained constructive advice and suggestions for improvement or clarity around specific wording.

Do you agree with, or have any comments on, our provisions on the assessment of Welsh language ability?

11. There was broad agreement with these provisions, with some responses providing further suggestions or suggesting alternate wording. The provision offering interviews in Wales where reasonably practical was particularly focused on, with some dissenting views and some responses seeking further clarity.

Do you agree with, or have any comments on, our provisions on the implementation and monitoring of the scheme?

12. There was broad agreement with these provisions, with further reassurances on our publication arrangements for Welsh language documents sought.

Do you agree with, or have any comments on, our complaints and suggestions for improvement provisions?

13. Responses broadly agreed with the proposals, with some minor revisions suggested by a small number of respondents.

Responses to specific questions

1. Do you agree with, or have any comments on, our proposed standard of service?

There were nine responses to this question. The majority view of seven agreed with the objective, of which six responses agreed with the provisions as drafted, and one suggesting a revision to improve legal accuracy by reference to the Welsh Language Act 1993, rather than Measures which the response correctly pointed out did not currently apply to the JAC.

Response – the provisions will remain largely as drafted other than a revision of the statute reference, to improve legal accuracy.

2. Do you agree with, or have any comments on, our advertising provisions?

There were eight responses to this question. Three responses agreed with the provisions as written. Two responses broadly agreed but provided suggestions to refine and clarify wording.

The minority view were two responses disagreeing with the test of 'reasonable and practicable' being applied to these provisions, suggesting conditional support for the proposal if those words were removed. It was suggested that the scheme instead outlined all circumstances in which we consider the provisions fail to meet 'reasonable and practicable'.

Response – the provisions will remain largely as drafted. The objections to the use of 'reasonable and practicable' are noted and we will keep the wording under annual review. However it is neither proportionate, nor currently possible, to indicate a JAC action for every variable that we would consider in applying this test meaning that a degree of flexibility, rather than a heavily prescribed policy, is needed. This will allow us to implement the provisions in the most effective and fair way. We will clarify wording to confirm that we *will* implement the provisions wherever appropriate.

3. Do you agree with, or have any comments on, our provisions on other communications and material including general publications and selection exercise materials?

There were nine responses to this question. Two responses agreed with the provisions as drafted, one response disagreed with the provisions on the basis that they disagreed with the introduction of the scheme generally; with six responses generally agreeing with the proposals while suggesting amendments.

The suggestions include:

- an extended application deadline for a candidate requesting a hard-copy Welsh language form
- two questions on the necessity of a hard-copy related provision, particularly where Welsh language is not a requirement of the vacancy, considering the 'digital by default' nature of public services
- a suggestion of '*on equal footing*' instead of '*no less favourably*' to clarify our operating standard
- a suggestion to test and capture linguistic capability in exercises where there is no Welsh language requirement to assist with deployment

Response – the provisions will remain largely as drafted, with '*on equal footing*' replacing '*no less favourably*'. The comments regarding hard copy provisions are noted, however as this is an interim position while our digital recruitment system is developed to include an online Welsh application form (this is a point in the Action Plan in our Welsh Language Scheme) the wording will remain but be kept under review pending developments.

The point is noted regarding the requirement to look at deadlines for candidates requesting Welsh language forms. We are committed to improving our digital capability which we intend to negate any hard copy forms in the future.

We are not currently considering Welsh language tests on exercises with no Welsh language requirement although we will discuss this suggestions with our delivery partners including Ministry of Justice (MoJ) and Her Majesty's Courts and Tribunals Service (HMCTS).

4. Do you agree with, or have any comments on, our provisions on the assessment of Welsh language ability?

There were nine responses to this question. One response disagreed with the provisions without further explanation, and one response agreed with the provisions as drafted. Four responses addressed the provisions on Welsh language assessment, and four responses addressed the provisions on interview arrangements (with some responses covering more than one topic).

Responses that addressed the assessment provisions suggested alternate measures, such as using various language qualifications instead of tests, with two responses suggesting that the Welsh language assessment should be kept separate from the main interview so as to avoid increasing pressure on Welsh candidates. The responses addressing the provision to offer, where practicable, an interview in Wales were divided. Two responses seemed to disagree with the provisions; with one questioning how this constituted a service improvement to Welsh candidates, and the other pointing out the inconvenience of travelling cross-country from Welsh locations. Two responses asked the JAC to clarify its policy on local interview arrangements in England.

Response – we confirm that the JAC has and does offer, where reasonable and practicable, regional interviews in England. There are variables that the JAC

must be mindful of when considering this option in any location, including the location and travelling ability of our interviewing panellists, and particularly our judicial panellists. We will respond constructively to any requests.

5. Do you agree with, or have any comments on, our provisions on the implementation and monitoring of the scheme?

There were seven responses to this question. Six responses were in general agreement, seeking clarifications on publication arrangements of the Annual Monitoring Reports.

The minority view was that a monitoring report would be costly, and raised concerns over any potential for the Welsh Language Commissioner to influence judicial selection.

Response – the provisions will remain largely as drafted. To clarify, the Annual Monitoring Report will itself fall under the scheme, and so will be available in both languages together, and equal in terms of format, size, quality and prominence.

6. Do you agree with, or have any comments on, our complaints and suggestions for improvement provisions?

There were four responses to this question. Two responses agreed with the proposal as drafted and one response suggested the Welsh Liaison Judges as additional recipients of any future complaints to and outcomes of the Welsh Language Commissioner.

The minority view was that complaints about any JAC activities should be directed to the Judicial Appointments and Conduct Ombudsman, rather than the Welsh Language Commissioner.

Responses – the provisions will be implemented as consulted on.

7. Do you have any general comments on the scheme or its introduction?

There were seven responses to this question. Three responses were generally supportive, with a further three suggesting further topics for inclusion including provisions for handling general correspondence; a recommendation on how JAC Commissioners represent Welsh interests; and also highlighting a narrow focus on judicial candidates within the scheme, to the exclusion of lay candidates in certain exercises.

A minority view voiced caution over whether the scheme gives influence over judicial appointments to the Welsh Language Commissioner, and over whether the scheme gives Welsh language ability primacy in appointments in Wales.

Response – the suggestion about a wider focus than judicial candidates is noted, and the scheme has been reviewed. We can confirm that the Welsh Language Commissioner has no input into our selection decisions; the remit of that office over Welsh Language Schemes is well established. The constitution of the JAC Commissioners lies outside the scope of this consultation, but suggestions are noted.

8. Do you have any views on whether the proposals may have potential equalities impacts (race, sex, disability, sexual orientation, religion or belief, age, marriage, civil partnership, gender reassignment, pregnancy and maternity?) If so, please give reasons if possible to support your view.

There were four responses to this question. Two responses questioned whether the scheme would disadvantage and discriminate against non-Welsh speakers or other minorities. One response acknowledge potential indirect discrimination to non-Welsh speakers but spoke to the justification of this by reference to the Welsh Language Act 1993 as a legitimate aim.

One response underlined achievements of the JAC Commission in levelling the playing field for candidates with protected characteristics, and urged that this should not be undermined by the assessment of linguistic skills. The response supported clarity around linguistic requirements to achieve this, so as to not deter good candidates from applying for Welsh posts.

Response – the provisions will remain as drafted. The points around disadvantage to Welsh candidates without Welsh language ability and other groups are noted. We confirm that linguistic requirements are set by the business area, and that the JAC tests any linguistic requirements to the standard identified as necessary by the business area, and no higher.

Conclusion and next steps

1. We would like to thank all respondents to the consultation, and all delivery partners and judicial colleagues that generously assisted in the development of this scheme. The responses have been key in constructing the final shape of the policy, and revisions have been made to the scheme in light of consultation responses detailed above. Given the high level of support for the draft scheme, its objectives and our rationale for developing it, we will implement and publish the final version at Annex A.
2. As outlined in our consultation, we undertake to review the scheme and the action plan it contains annually, and will seek comments and advice from the Welsh Language Commissioner's Office before making any further amendments.
3. The timetable for the next stages of the policy are the publication of the Welsh Language Scheme on the JAC website in March 2016, the development of internal guidance for the application of the scheme for JAC staff, the ongoing development of our online application system to incorporate Welsh language forms, and the undertaking and publication of an Annual Monitoring Report to the Welsh Language Commissioner, the Ministry of Justice and the Welsh Liaison Judge.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Annex A – List of Respondents

Judiciary

Chair of and on behalf of the Wales Committee of the Association of Her Majesty's District Judges

Deputy District Judge

District Judge

Regional Employment Judge for Wales on behalf of the President of Employment Tribunals

Welsh Language Liaison Judge

Government

Ministry of Justice, Welsh Language Co-ordinator

Wales Government, Justice Policy

Others

2 x respondents from Chambers

1 x respondent undisclosed



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