



HM Courts &
Tribunals Service

Response to consultation on the Welsh Language Scheme

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Response to consultation carried out by the Her Majesty's Courts and Tribunals Service

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Introduction and contact details

This document is the response to the consultation on Her Majesty's Courts and Tribunals' (HMCTS) Welsh Language Scheme

It will cover:

- the background to the report
- a summary of the responses to the consultation
- a response to the issues raised
- the next steps following this consultation

Further copies of this report and the consultation paper can be obtained by contacting Hywel Hughes at the address below:

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This report is also available at <https://consult.justice.gov.uk/>
Alternative format versions of this publication can be requested from the above address.

Complaints or comments

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

Background

1. The consultation paper on the “Welsh Language Scheme” was published on 11th December 2017 and closed on 29th January 2018. It invited comments on HMCTS’ proposed revised Welsh Language Scheme (the “Scheme”). The Scheme is firmly based on the principle in Section 5 of the Welsh Language Act 1993 that, in the conduct of public business and the administration of Justice in Wales, HMCTS will treat the English and Welsh languages on a basis of equality.
2. Respondents were requested to comment on three particular questions:
 - Do you think that the Scheme is clear enough in explaining what services HMCTS will provide in Welsh to the public, staff and the magistracy?
 - What improvements if any would you make to the Scheme?
 - Is there anything we should include in the Scheme that would assist us to better deliver a Welsh service in a Wales that is continuously changing?
3. Respondents were able to submit their views and comments on paper or online in either Welsh or English
4. We are grateful to everyone who responded to our consultation. The responses represent an invaluable source of views, information and ideas which will inform the publication of our revised Welsh Language Scheme
5. This consultation response summarises the responses received, our response to them, and how the consultation process has influenced the revised Scheme. The full list of respondents is given at Annex A.

Summary of responses

6. A total of eighteen responses to the consultation paper were received and the majority of the responses came from the judiciary and magistracy. Other responses came from HMCTS staff, Cymdeithas Cyfieithwyr Cymru (Association of Welsh Translators and Interpreters), Mudiad Dathlu'r Gymraeg (Association to Celebrate the Welsh Language – not an official translation of the title), South Wales Police and the Department for Work and Pensions.
7. The responses to the consultation were positive. The majority of respondents agreed with the content of the proposed Welsh Language Scheme, including its commitments, and with the consultation process itself.
8. The main points raised in comments were about:
 - HMCTS' plans to advertise Welsh essential posts in Wales and greater clarity within the Scheme as to when we would look to advertise a post with Welsh essential as opposed to Welsh desirable, and if essential at what level of fluency
 - More clarity on the vocational courses we would offer our staff in Welsh
 - A comment as to whether the existing process for dealing with complaints in relation to the Welsh language provision within Probate remains the same
 - Respondents were pleased to note the reference within the Scheme to use translators who were members of Cymdeithas Cyfieithwyr Cymru if HMCTS' own translators were unable to do the work internally
 - A comment from the judiciary that the Scheme should state that if a witness wishes to give evidence in Welsh and is examined or cross examined in English, that the witness be given the choice of having the English questions translated into Welsh
 - The need to record formally within the Scheme the arrangements in place with Cymdeithas Cyfieithwyr Cymru (referred to hereafter as CCC) that the ability to interpret in Welsh in court hearings is a Specialist Professional Category within CCC's membership category
 - The responses from Magistrates requested HMCTS to do more to inform court users of their right to use Welsh in hearings and to ensure the Scheme was publicised extensively including within the Magistracy itself
 - There were positive comments in relation to HMCTS' commitment to provide digitised services in Welsh
 - One respondent stated that the demand for Welsh services was low in North East Wales
 - Greater clarity as to the use of Welsh in the Court of Appeal or the Upper Tribunal
 - The need to include the Welsh Language Liaison Judges as interested parties in the section on those with 'Responsibility for the Scheme'
 - Although paragraph 5.22 of the Scheme states that there is no right to a Welsh hearing (only to speak Welsh in a hearing) it might need replicating in the specific section relating to the work of the Tribunals and especially in relation to SSCS hearings

- Welcoming the firm commitment to the Welsh language provided by HMCTS' Chief Executive in the Foreword to the Scheme.
- There were a few comments that referred to typographical or semantical related matters
- One comment in relation to HMCTS publishing its own list of Welsh terms as opposed to waiting for these to be standardised
- The need to include the judiciary in the reference to the general public in paragraph 1.4 which already included references to the legal profession, local authorities and public prosecuting authorities
- A comment as to whether the Scheme should make reference to the newly established Business and Property Court
- A comment that the Scheme should detail the Welsh related courses that new staff to the organisation in Wales should complete
- Referring to Welsh interpretation in court as interpretation as opposed to simultaneous translation

Responses to specific questions

1. Do you think that the Scheme is clear enough in explaining what services HMCTS will provide in Welsh to the public, staff and the magistracy?

The majority of respondents agreed that the provisions of the Scheme were clear enough.

One respondent suggested that the Scheme should provide a full list of all the occupational courses we hold in Welsh for staff.

Another response from a member of the Judiciary seeking clarity for SSCS Tribunal hearings in relation to what the actual legal requirements were in relation to the use of Welsh.

A comment from the judiciary that the Scheme should state that if a witness wishes to give evidence in Welsh and is examined or cross examined in English, that the witness be given the choice of having the English questions translated into Welsh

A member of staff raised the question following a request to use Welsh in the Upper Tribunal in London as to whether the Scheme should make it clear what provisions HMCTS offer in relation to the use of Welsh in any of the upper courts or tribunals. Allied to this was a comment from the Judiciary that if the Welsh language was used in a court or tribunal hearing outside of Wales then the relevant judge should as a matter of course contact the Welsh Language Liaison Judges for guidance.

Similarly mention was also made about making reference to the use of Welsh in the Business and Property Court which sits occasionally in Wales.

The responses from Magistrates requested HMCTS to do more to inform court users of their right to use Welsh in hearings and to ensure the Scheme was publicised extensively including within the Magistracy itself

Although the Courts and Tribunals allows the use of simultaneous interpretation from English to Welsh when a witness who has elected to give evidence in Welsh is questioned in English, there is a need to actually state this within the Scheme.

One comment drew attention to articulating better within the Scheme the Welsh language training that HMCTS staff would need to undertake.

HMCTS response

In relation to publishing a list of courses that we provide to staff in Welsh it is very difficult to be prescriptive as many of them arise on an ad hoc basis.

HMCTS has a good track record in trying to increase the use of Welsh internally but it has finite resources at its disposal. If we know that staff would appreciate us holding a course or training event in Welsh and that it would be supported then we would react positively to the situation as it arises. Indeed a recent Mental Health Awareness session for staff at Caernarfon was run in Welsh with the use of simultaneous interpretation for those who did not understand Welsh.

In relation to clarity as to what we are obliged to provide legally in SSCS hearings, paragraph 5.44 in the Section on 'Tribunal, Probate and Court of Protection Hearings' will include wording to say that there is no obligation for HMCTS to provide a bilingual panel but that it will endeavour to do so when we know that evidence will be presented orally in Welsh. However due to a shortage of

medical panel members that speak Welsh, it will not be possible in all cases to do this and in such instances the use of Welsh will be facilitated with the support of a Welsh language interpreter.

We will include reference within the Scheme at Section 5 to offering a choice for a witness giving evidence in Welsh to have English questions translated into Welsh as follows ***“Any witness who has elected to give evidence in Welsh but is questioned in English by non Welsh speaking Counsel will be given the choice of having the English questions translated into Welsh if that makes the process of giving evidence in Welsh easier”***.

Although the Scheme does make reference to the use of Welsh in courts outside of Wales we agree that it would be helpful to make direct reference to the upper courts and tribunals. The following wording is therefore suggested in the section that relates to the use of Welsh in hearings outside of Wales. ***“In the first instance if we know that a case to be heard in the Appeal Court or the Upper Chamber of the Tribunals involves the use of the Welsh language then provision should be made to list the case to be heard in Wales where the use of Welsh will be facilitated. If the hearing takes place outside of Wales and when the Welsh language has been used in evidence in the previous hearings that have led to the appeal, then following consultation with the relevant judge and the Welsh Language Liaison Judges, consideration will be given to allowing the use of Welsh”***.

Under paragraph 5.46 of the Scheme which refers to the use of Welsh in courts outside Wales the following wording should be added: ***“In such instances the relevant Judge should liaise with the Welsh Language Liaison Judges for guidance”***.

A new paragraph 5.40 has been included in the Scheme to refer to the Business and Property Court.

In relation to doing more to inform court users of their right to use Welsh in hearings and to ensure the Scheme was publicised extensively including within the Magistracy itself a note to this effect is now inserted in paragraphs 5.28 and 13.1.

On the use of interpretation from English to Welsh the following wording will be included in paragraph 5.22 ***“Any witness who has elected to give evidence in Welsh but is questioned in English by non Welsh speaking Counsel will be given the choice of having the English questions translated into Welsh if that makes the process of giving evidence in Welsh easier”***.

On the comment stating that we should articulate better within the Scheme the Welsh language training that HMCTS staff would need to undertake, the narrative has been extended in Section 8 of the Scheme to refer to compulsory meeting and greeting training for staff, Welsh language awareness and the introduction to Welsh language within the Welcome to Wales event for new staff in Wales.

2. What improvements if any would you make to the Scheme?

Four comments made direct reference to publicising the Scheme especially within the Magistracy and the courts and tribunals buildings themselves. Comments were made in relation to creating posters to inform the public of the Scheme or even to advertise the right to use Welsh in court and tribunal hearings in the media including television.

A reference was made to noting the interest of the Welsh Language Liaison Judges in terms of responsibility for the Scheme. The reason being that the use of Welsh in a court or tribunal hearing has obvious judicial interest in terms of access to justice.

A comment was made in relation to asking legal advisers to inform every defendant and witness that they have the right to speak Welsh in a hearing if they so require.

A comment was made as to whether the existing process for dealing with complaints in relation to the Welsh language provision within Probate remains the same

One response made reference to whether HMCTS would advertise any posts in Wales with a Welsh essential specification. The Scheme currently states that “some posts within Wales will be advertised with a Welsh essential or desirable designation”.

Finally one of the respondents requested that the Scheme formally makes reference to the fact that Cymdeithas Cyfieithwyr Cymru has established a Specialist Professional Category for interpreting in court/tribunals within their simultaneous interpretation membership category.

HMCTS response

In relation to publicising the Scheme and the Welsh services we offer, we will strengthen the narrative in Section 13 of the Scheme to make direct reference to providing hard copies in courts and magistrates retiring rooms together with using the social media avenues open to us to publicise the Scheme. Although television advertising will be far too expensive to pursue there is merit in looking at other channels of promoting the Scheme and the right to use Welsh by working in conjunction with the central Communications Unit to produce a You Tube video animation.

We will amend the wording under paragraph 3.3 of the Scheme under the heading of ‘Responsibility for the Scheme to include the following ***“The Welsh Language Liaison Judges have an important role to play in ensuring that the provisions of this Scheme are implemented in relation to the use of Welsh in court/tribunal hearings”***’

The User Research conducted in 2017 by HMCTS with Welsh speakers indicated that in order to facilitate the greater use of Welsh in court hearings it might be worthwhile for legal advisers, especially in the more Welsh speaking areas of Wales e.g Caernarfon Justice Centre, to offer defendants and witnesses the opportunity of ‘speaking English’ as opposed to ‘Welsh’. This would convey a message that the normal ‘default’ language of the courts is Welsh and not English. We see this more as an initiative that we can pursue as opposed to ‘policy’ at this stage so we do not propose to make this a policy statement within the Scheme.

In relation to the process for complaining about Welsh language provision within the probate jurisdiction of our work, the Scheme will be amended to note that a complainant, if dissatisfied with the response from the Probate Registry Manager can complain to the National Business Centre Cluster Manager as opposed to the Family and Probate Service Area Director as previously stated.

We acknowledge that work is needed to improve our external recruitment in relation to Welsh skills. During 2016 we refreshed our recruiting guidance on the Welsh language to our managers and the business case form for advertising posts includes a question on Welsh language and

whether Welsh essential was considered as a prerequisite for the post.

We have identified four posts within the organisation that require Welsh essential skills namely: Administrative Officers, Bailiffs, Ushers and Legal Advisors (other than the obvious posts within the Welsh Language Unit) and bilingual job descriptions have been prepared. However the trigger for an Operational Manager to decide whether they should advertise a post as Welsh essential or not will be based on ensuring the court or function mirrors the linguistic profile of the area it serves e.g if the Welsh speaking population of Cardiff is 30% and we have 10 legal advisers in Cardiff Magistrates Court with 3 Welsh speaking, then any departure that needs back filling will need to factor this requirement in mind.

In order to strengthen the narrative in the Scheme on recruitment one of the judicial responses suggested the addition of the words “*in close liaison with the Delivery Director for Wales*” as in the following revised extract: “***The decision as to whether a post is Welsh essential is made by local managers in close liaison with the Delivery Director for Wales based on ensuring the court/ office’s linguistic profile matches that of the area it serves***”.

We agree that the Scheme should note the fact that CCC has a specialist category for Welsh interpretation in courts/tribunals. A new paragraph 5.27 will be included in the Scheme that states “***Simultaneous interpretation in court/tribunal hearings is a specialist skill and is recognised as such by a specialist membership category by Cymdeithas Cyfieithwyr Cymru***”.

3. Is there anything we should include in the Scheme that would assist us to better deliver a Welsh service in a Wales that is continuously changing?

There were two positive comments that made specific reference to the fact that the Scheme stated that HMCTS would use qualified translators who are members of Cymdeithas Cyfieithwyr Cymru if it couldn't meet the work demand internally.

One comment was received from a magistrate which referred to HMCTS publishing its own list of Welsh terms as it would assist the magistracy in their work. The comment was offered with the appreciation that standardising Welsh terms within the administration of justice could take a long time to achieve.

HMCTS Response

The Lord Chancellor's Welsh Language Standing Committee has commissioned a workgroup to look at the standardisation of terms used in the administration of justice and the workgroup has representatives from the Welsh Commissioner's Office and Welsh Government. Some 1,600 terms in the administration of justice were standardised by the old Welsh Language Board in 2013 and whilst the current workgroup's work is in progress we would suggest raising awareness within the Magistracy of those terms already standardised.

Conclusion and next steps

HMCTS is grateful to everyone who responded to the consultation paper. All comments received have been carefully considered and where appropriate have been included in the revised Scheme. The revised Scheme is published alongside this consultation response.

We continue to recognise the importance, cultural significance and value of the Welsh language and are excited by the opportunities our reform programme affords us to provide digital services through the medium of the Welsh language.

We will continue to work with the MoJ, other partner agencies within the Department, the Judiciary and Magistracy together with other stakeholders in the justice system to further improve and develop Welsh language provision.

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 consultation respondents

1. Her Honour Judge Mererid Edwards, Welsh Language Liaison Judge
2. His Honour Judge Gareth Jones, Designated Family Judge for North Wales
3. Judge Barry Clarke, Regional Employment Tribunal Judge for Wales
4. Judge Anne Curran, Regional SCS Tribunal Judge for Wales
5. Elfed ap Gomer J.P
6. David Subacchi J.P (as an individual magistrate and on behalf of the Wales Bench Chair Forum)
7. Emlyn Lewis J.P
8. Rhys Davies J.P
9. Stephen Rogers J.P on behalf of West Glamorgan Bench
10. Cymdeithas Cyfieithwyr Cymru (Association of Welsh Interpreters and Translators)
11. Mudiad Dathlu'r Gymraeg (Association for Celebrating the Welsh Language)
12. Peter Strathearn, DWP
13. Adam Green on behalf of South Wales Police
14. Hugh Simkiss, HMCTS Head of Change (CFT)
15. Nick Albrow, HMCTS Head of Change (Crime)
16. Eurgain Jarvis, HMCTS Welsh Language Policy Officer
17. Terry Eastman, HMCTS (member of staff)

In addition to the above respondents, HMCTS would also like to acknowledge and thank the Welsh Language Commissioner's office for the help and advice offered during the revisions to our Welsh Language Scheme.



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