

## RESPONSE OF THE JUDGE'S COUNCIL COMMITTEE FOR WALES

### INTRODUCTION

1. This is the response of the Judges' Council Committee for Wales (JCCW) to the invitation of the Commission on Justice in Wales. The JCCW is chaired by the Lord Chief Justice and comprises representatives of the judiciary in Wales.
2. The invitation from the Commission invites responses on a wide range of matters, involving the roles of a number of different bodies and dealing with different sectors of Welsh public and commercial life.
3. As a body comprised of judges involved in applying the law in Wales, the JCCW considers that it is not appropriate for it to comment on matters of policy or to become involved in the development of policy. It can at most offer its experience of how certain matters are currently dealt with in Wales. This response, therefore, will necessarily be limited in scope. The response refers to the questions in the Commission's published call for evidence.

### QUESTIONS

4. Questions 1 to 4 are, at present, rather general in scope. The JCCW does not consider that it could usefully offer comments on those questions.
5. Question 5 asks what impact devolution has had on the justice system in Wales and what impact will it have in the future. The Commission will be well aware of the scope of the devolution settlement and the areas in which the National Assembly for Wales has power to make primary legislation and the Welsh Government has power to make secondary legislation. In terms of the judges, the most significant impact of

devolution has been the existence of a separate source of law in Wales and the fact that certain areas are regulated by primary and secondary legislation made by the Assembly and the Welsh Government. As the volume of such legislation increases, the impact will be greater. First, the separate sources of law in Wales necessarily raises questions of access to the law (considered by the Law Reform Commission in its report on Form and Accessibility of the Law, Law Comm. 366, with which the Commission will be familiar). Secondly, the separate sources of law raise issues concerning the training of judges in this legislation. There is now a committee of the Judicial College responsible for training judges in Wales on matters of Welsh law which arranges training courses on matters such as recent legislation on housing and social care. Thirdly, there are also questions of ensuring that ancillary secondary legislation (for example, the Civil Procedure Rules) properly accommodate the differences in law between Wales and England. Other issues doubtless arise.

6. Questions 6 and 7 deal with the roles of other bodies, not the judiciary, and the JCCW does not consider it appropriate to comment on these matters.
7. Question 8 asks about the possible divergence of sentencing law in Wales and in England. At present, the general criminal law is a matter for the United Kingdom Parliament. Sentencing is dealt with by legislation made by that Parliament, the Guidelines issued by the Sentencing Council and the decisions of the Court of Appeal (Criminal Division) which apply in Wales and in England. In relation to those matters, there has been no divergence between Wales and England. The Assembly may make laws and may incidentally provide for criminal sanctions in the event of a breach of those laws. To that extent, there may be additional criminal offences in Wales and sentences will be imposed (in accordance with the limits imposed by the

Welsh legislation) for those offences. The JCCW is not aware of any difficulties having been experienced in relation to these matters.

8. In relation to questions 9 to 12, the JCCW would not consider it appropriate for it to comment on these matters.
9. Question 13 raises issues concerning the use of the Welsh language. This is an important topic. First, in relation to legal proceedings, there is a statutory right to use the Welsh language in legal proceedings in Wales (section 22 of the Welsh Language Act 1993). Any power to make rules includes a power to make rules permitting the use of documents in the Welsh language. Representations have been made to the Civil Procedure Rules Committee by the Presiding Judges of Wales that that power be exercised and the Civil Procedure Rules amended to ensure such a right. There is a Practice Direction on the use of the Welsh language. There are protocols in place to facilitate the use of the Welsh language in magistrates' courts. Secondly, the administration (Her Majesty's Courts and Tribunals Service Wales) operates bilingually in both Welsh and English. Thirdly, there is a recognition that initiatives originating from outside Wales ensure equality of treatment for the Welsh and English languages. By way of example, the recent Judicial Ways of Working 2022 - Civil document notes, in relation to the proposals for an online court, that there should be Welsh equality with English for conducting litigation in Wales and that an original Welsh language input may be necessary not just translation.
10. Question 14 asks if access to Welsh law is properly available. This is a topic that has been the subject of considerable debate within Wales as the Commission will be aware. The most authoritative review is probably the Law Reform Commission report

on the Form and Accessibility of Law (Law Commission 366). The Commission will be aware of proposals by the Assembly to codify Welsh legislation.

11. The JCCW notes that there are a number of sources of law in relation to Wales:

(1) primary legislation enacted by the UK Parliament, and secondary legislation made by the UK government under that legislation;

(2) primary legislation enacted in areas of devolved competence by the National Assembly for Wales,

(3) secondary legislation made by the Welsh Ministers (under primary legislation made by the UK Parliament or the National Assembly);

(4) the common law, i.e. the principles developed by the courts.

12 In addition, there may be guidance and circulars produced by the Welsh government or departments of the United Kingdom government which may be relevant to the resolution of disputes.

13 The JCCW assumes that the Commission will be considering the ways in which a variety of groups can have access to this law including, but not limited to;

(1) individuals and litigants in person;

(2) the legal profession (in Wales and elsewhere who advise clients with interests in Wales)

(3) public sector bodies, commercial bodies, and not-for-profit organisations;

(4) the judiciary (comprising the Supreme Court, the Court of Appeal, all High Court judges, who may sit in Wales, the circuit bench, the district judges, judges of UK, and Welsh tribunals, the Upper Tribunal, and the magistracy in Wales).

- 14 By way of information, we understand that the Commission has, or is, obtaining the number of circuit and district judges in Wales. The Commission will, therefore, will be well aware of the number and role of the judges in Wales.
- 15 In addition, the Commission may wish to bear in mind the extent of the work of the senior courts in Wales. In relation to the High Court there are currently 92 High Court Judges all of whom are eligible to sit in Wales or England. Of these, there are two Presiding Judges, a Family Division Liaison Judge, and a Business and Property Court Liaison Judge (formerly known as the Chancery Supervising Judge) with responsibility for Wales. There is also the President of Welsh Tribunals who is the leadership judge of the devolved Welsh Tribunals. The information that the Committee has is that High Court Judges sat in courts in Wales for a total of 418 days in 2016/2017 legal year. Of that, the two Presiding Judges, the Family Division Liaison Judge and the Chancery Supervising Judge sat for a total of 210 days. Other High Court judges sat in courts in Wales for a total of 208 days. Other judges, authorised to sit as deputy High Court judges, also sat for additional days.
- 16 The Court of Appeal (Criminal Division) has previously provided the Committee with the following information on the case load originating from decisions from criminal courts in Wales. These include applications (for permission to appeal against conviction or sentence) which were considered on the papers and oral hearings (on substantive appeals, where permission was granted, or on renewed applications for permission to appeal).

Calendar Year	No. of applications	No. of court hearings
2012	382	99

2013	361	89
2014	310	103
2015	282	67
2016	258	70
2017	249	62

17. The Court of Appeal has previously provided the Committee with the following information on the number of cases originating from decisions of civil courts or tribunals in Wales. These include permissions to appeal (considered on the papers) and oral hearings (substantive hearings where permission to appeal had been granted or renewed applications for permission to appeal).

Calendar Year	No. of applications	No. of court hearings
2014/2015	37	19
2015/2016	39	17
2016/2017	41	12

18. The Court of Appeal has heard criminal appeals and civil appeals in courts in Wales. In 2016, the Court of Appeal (Criminal Division) – comprising three judges - sat for 7 days in Wales (in Cardiff and Swansea) and the Court of Appeal – comprising 3 judges - sat for 6 days in Swansea. In 2017, the Court of Appeal (Criminal Division) – comprising three judges - sat for 7 days in Wales (in Cardiff and Swansea) and the Court of Appeal – comprising 3 judges - sat for 5 days in Cardiff.

22 May 2018.

