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## The Welsh Language Act 1967: The first 50 years

Rt Hon. Sir David Lloyd Jones, Lord Justice of  
Appeal

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Cymdeithas y Cyfreithwyr  
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First Minister, Presiding Officer, Commissioner, Ladies and Gentlemen

The enactment of the Welsh Language Act 1967 was a great turning point for the Welsh language, not least because it provided for the first time that in any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it. The fiftieth anniversary of the Act and this conference provide an excellent opportunity to assess what has been achieved and I am very grateful for this opportunity to speak on the subject this evening.

If we consider for a moment the history of the Welsh language in the courts of this country, we can see what a sea-change it achieved. One of the reasons given in the Act of Union of 1536 for the incorporation of Wales into the Realm of England was that:

the People of the same Dominion have and do daily use a Speech nothing like, nor consonant to the natural Mother Tongue used within this Realm.

As a result, that statute not only provided for the annexation of Wales but also included the chilling injunction:

that from henceforth no Person or Persons that use the Welsh Speech or Language shall have or enjoy any Manner Office or Fees within this Realm of England, Wales or other the King's Dominions.

That prohibition on Welsh speakers holding office, of course, included judicial office.

In the centuries that followed, it appears that Welsh nevertheless continued to be used in courts of law in Wales at all levels. It was also used extensively in County Courts in Wales from their creation in 1846. However, this met with considerable official disapproval. In 1847 a Government Report on Education in Wales had some strong things to say about the use of the Welsh language generally and its use in the courts in particular. Its publication inflamed public opinion in Wales to such an extent that it became known as the Treason of the Blue Books (*Brad y Llyfrau Gleision*). The Commissioners concluded:

The evil of the Welsh language [...] is obviously and fearfully great in courts of justice [...] It distorts the truth, favours fraud, and abets perjury, which is frequently practised in courts, and escapes detection through the loop-holes

of interpretation [...] The mockery of an English trial of a Welsh criminal by a Welsh jury, addressed by counsel and judge in English is too gross and shocking to need comment. It is nevertheless a mockery which must continue until the people are taught the English language...<sup>1</sup>

The solution was obvious – to stamp out the use of the Welsh language.

I am glad to say that the twentieth century brought a gradual improvement in the legal status of the Welsh language. The language clause of the 1536 Act was repealed by section 1, Welsh Courts Act, 1942. However, that provision did not confer a right to use Welsh in the courts; it merely provided that:

the Welsh language may be used in any court in Wales by any party or witness who considers that he would otherwise be at any disadvantage by reason of his natural language of communication being Welsh.

The great breakthrough came with the enactment of the Welsh Language Act 1967. This statute permitted any party or witness or any other person who desires to use the Welsh language in court to do so:

22.—(1) In any legal proceedings in Wales the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly.

(2) Any power to make rules of court includes power to make provision as to the use, in proceedings in or having a connection with Wales, of documents in the Welsh language.

Then in 1993 the Welsh Language Act established the principle that 'in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on the basis of equality.'<sup>2</sup>

These changes in legislation have been accompanied by a similar change in attitudes to the use of the Welsh language in courts in Wales. Consider these

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<sup>1</sup> Accounts and papers of the *Report of the Commissioners of Inquiry into the State of Education in Wales*, 1847, Vol. 27, Pt. ii, 66.

<sup>2</sup> Welsh Language Act 1993, long title.

contrasting statements by senior judges. In 1943 Lord Caldecote C.J. observed extra-judicially:

Welsh is a foreign language to me and, to tell you the truth, I do not know that I feel very sympathetic to this plan for keeping alive what, like Erse and Gaelic, is really a dying language.

In 1967 Widgery J., later Lord Chief Justice, observed:

I think it is quite clear that the proper language for court proceedings in Wales is the English language. It is to my mind a complete misapprehension to believe that anybody at any time has a right to require that the proceedings be conducted in Welsh. The right which the Act of 1942 gives is the right for the individual to use the Welsh language if he considers that he would be at a disadvantage in expression if he were required to use English. That is the only right which the Act of 1942 gives, and apart from that, the language difficulties which arise in Wales can be dealt with by discretionary arrangements for an interpreter, precisely in the same way as language difficulties at the Central Criminal Court are dealt with when the accused is a Pole.<sup>3</sup>

By contrast Judge L.J., as he then was, in his judgment in the Court of Appeal in *Williams v. Cowell* in 2000 referred to the prohibitions on the use of Welsh in the 1536 Act, and added:

In other words Welsh people appearing in courts in Wales, litigating over problems in their own country, were prohibited from using their own language. Mr Williams and those who support him no doubt regard this legislation, and the subsequent Act of 1542 [...] as an outrage [...] For what it is worth I agree with them.<sup>4</sup>

In June 2011, Lord Judge, Lord Chief Justice, delivering the inaugural lecture at the Hywel Dda Institute at the University of Swansea on the subject of the legal status of the Welsh language, ended his lecture with these words:

Here in Wales, speaking as Lord Chief Justice of Wales, I can only urge you to safeguard your language. Guard it well.<sup>5</sup>

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<sup>3</sup> *R. v. Merthyr Tydfil Justices, ex parte Jenkins* [1967] 1 All ER 636.

<sup>4</sup> [2000] 1 WLR 187. The Court of Appeal held that there was no statutory basis for permitting proceedings in Welsh when sitting in London. However, the Employment Appeal Tribunal now sits in Wales. R.G. Parry 'Yr Iaith Gymraeg a'r Tribiwnlys Apel Cyflogaeth – ystyried y penderfyniad yn *Williams v. Cowell* (2001), 1 *Wales Law Journal*, 178; Timothy H. Jones and Jane M. Williams, 'Wales as a Jurisdiction', [2004] *Public Law* 78, 98.

<sup>5</sup> Lord Judge, 'The Welsh Language: Some Reflections on its History', University of Swansea, 22 June 2011.

It seems to me that it is a basic requirement of fairness that witnesses, litigants and other court users in Wales should be allowed to express themselves in court in the Welsh language in which they conduct their everyday lives. Today Welsh is used frequently in courts and tribunals in Wales, with simultaneous translation into English. In the year to March 2017 there were 395 cases conducted wholly or partly in Welsh. Most of these cases were in courts in North West Wales which remains the heartland of the language. There were 53 in the Crown Courts, 193 in County Courts and 149 in the Magistrates' Courts. In 2006 a murder trial was conducted in Welsh before Roderick Evans J. at Caernarfon Crown Court. And I should mention a particularly notable use of the Welsh language to present detailed legal argument. In 2014 the Welsh Language Commissioner challenged the decision of National Savings and Investments to withdraw its Welsh language scheme. Most of the documents and all written submissions were in Welsh and counsel used Welsh or English as they chose during the course of the hearing. The court delivered its judgment in both English and Welsh.

On the foundation laid by the Welsh Language Act, there has developed a Welsh-speaking judiciary. Including the part time judiciary, there are today over 40 judges who are fluent in Welsh. A quarter of the Circuit Judges and District Judges in Wales are able to conduct cases in Welsh. Many others are learning Welsh and have sufficient command of the language to be able to follow evidence given in Welsh. So far as the appointment of judges is concerned, it is now possible to specify that the ability to speak Welsh is essential for appointment to a particular post and this frequently happens. Similarly, since 2010 it has been possible to advertise for Welsh speaking magistrates. There are currently over 200 magistrates able to conduct cases in Welsh and this will ensure that the Welsh speaking magistracy can be maintained at least at that level.

A number of parallel developments support the use of Welsh in the courts in Wales.

- The Lord Chancellor's Advisory Committee on the Welsh Language exists to promote the use of Welsh in courts in Wales. Its members represent the judiciary, the legal professions, the police, the probation service and other bodies concerned with the administration of justice.

- Justice Wales Network (*Rhwydwaith Cyfiawnder Cymru*) co-ordinates Welsh language training for public bodies involved in the administration of justice.
- HMCTS and its Welsh Language Unit, based in Caernarfon, have done an excellent job in facilitating the use of Welsh in the courts.
- The courts have the benefit of excellent simultaneous translation by expert linguists.
- The Judicial College provides specialist training for the judiciary on the use of Welsh in court.
- All in all, there is a very positive attitude towards the use of Welsh within the courts system.

More generally:

- A great deal of work by scholars, practitioners and judges is developing a modern standardised legal terminology which makes Welsh suitable for use as a legal language.
- Law courses in the medium of Welsh are now offered in all five law schools in Wales.
- A series of legal textbooks in Welsh is being produced.
- The Law Commission of England and Wales publishes papers on law reform in Welsh. Most notably it published its report 'Rhentu Cartrefi yng Nghymru' in both English and Welsh.<sup>6</sup> As the divergence of English law and Welsh law grows, the Commission has a vital role to play in making proposals for law reform and in seeking to make Welsh law more accessible.
- So the use of Welsh in the courts is just one part of a remarkable development – known widely as Legal Wales – in which the language is playing a major role.
- None of this would have been possible without the Welsh Language Act 1967 which has been the foundation for the later developments.

One of the great challenges which lies ahead of us in this regard concerns bilingual legislation. The National Assembly produces legislation with both English and Welsh

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<sup>6</sup> *Rhentu Cartrefi yng Nghymru/Renting Homes in Wales*, Law Com No. 337, Cm 8578, (2013).

texts and both language texts are to be treated as of equal standing<sup>7</sup>. As a result, we have, for the first time in the United Kingdom, bilingual legislation.

- This makes new demands in relation to legal terminology.
- It requires new skills in bilingual drafting. Prior to the advent of devolution there was no experience in the United Kingdom of the making of legislation in bilingual form. However, the bilingual character of Welsh legislation is now central to the role of those charged with drafting it. As Prof. Thomas Watkin has observed:

The Welsh text of such bilingual legislation was not to be a quaint addition to the authoritative English text for the convenience of those who wished to access the text in their native tongue, but a fully equivalent expression of the legislative intention.<sup>8</sup>

This is an area where the Assembly has learnt a lot from the practice in Canada.

- The judges too will have to learn new skills in the interpretation of bilingual legislation. This is something which, previously, we have never had to do.

This is not the occasion on which to address the many difficult technical issues which arise in relation to the interpretation of bilingual legislation. I will simply say that, to my mind, the principal objectives of interpretation of bilingual legislation in English and Welsh should be to ascertain and to give effect to the intention of the legislature and to maintain the equal status of the two languages. However, these two objectives will not always be achievable to the full extent and there may sometimes be a tension between them. Discrepancies between the different language texts will inevitably occur and will have to be resolved. On the other hand, there will be occasions when the existence of two language texts which are intended to express the same meaning will assist in ascertaining that meaning.

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<sup>7</sup> Section 156, Government of Wales Act, 2006.

<sup>8</sup> Thomas Glyn Watkin, *Bilingual Legislation: Awareness, Ambiguity and Attitudes*.

A system of legislation expressed in two languages, each of which is equally authoritative, will inevitably make fresh demands on its subjects. There will be a particular need for linguistic proficiency on the part of those whose occupations or professions require them to understand and apply the law. This is especially true of legal professionals and, perhaps above all, of the judiciary on whom we depend for definitive interpretations of statute law. This clearly has implications for the appointment of judges and magistrates.

Bilingual legislation will also place demands on legal education and training. All those seeking to practise in the legal professions in Wales, whether fluent in Welsh or not, will require at least a basic knowledge of the operation of a bilingual legal system. It is important therefore that the study of bilingual legislation and its interpretation should form part of university law degree courses in Wales. There is also a particular need for continuing training to enable judges to develop their skills in the Welsh language and in using it in court. The Judicial College has in recent years provided annual training courses for the Welsh speaking judiciary which have been particularly well received by the participants. It is likely that this provision will need to be further developed.

On this 50<sup>th</sup> anniversary of the Welsh Language Act there is, I would suggest, some cause for congratulation. The Act has provided a sound basis for what has been achieved. Above all, there is great goodwill within the legal system towards the Welsh language and the use of Welsh in the courts has come to be regarded as entirely normal. There is, of course, a lot more to be done – but we have made a good start.