

**The Legal Services Board,  
1, Kemble Street,  
LONDON, WC2B 4AN.**

5 March 2018

**TO WHOM IT MAY CONCERN**

I understand from Mr. David Dixon, Senior Lecturer at Cardiff University’s Centre for Professional Legal Studies and the South Wales representative on the Law Society Council, who also sits on both its Education and Training Committee and its Wales Committee, that consideration is being given to the approval of proposals for a Solicitors Qualification Examination. Mr. Dixon has drawn this to my attention owing to concerns regarding provision for the Welsh language in these proposals. He believed that this would be of interest and concern to me as a former Professor of Law at Cardiff Law School (2001–2004) and first head of Bangor Law School (2004–2007), in both of which institutions I was responsible for the introduction of Welsh-medium teaching within the Law curriculum. I later served as First Legislative Counsel to the Welsh Government (2007–2010), where I established the Office of Legislative Counsel to draft primary legislation for the Welsh Government in both English and Welsh.

I understand that the proposed SQE will be conducted in English only, and, if this is the case, raises serious concerns regarding the extent to which the particular needs of Wales have been taken into account when developing the new assessment.

First, you will be aware that the Welsh Language Act 1993 enshrined in law the language equality principle, namely that “in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality” (s. 5(2) ). The Welsh Language (Wales) Measure 2011 has since established Welsh as an official language in Wales (s. 1(1) ), and the National Assembly for Wales (Official Languages) Act 2012 has made both Welsh and English official languages for the purposes of the National Assembly’s business (s.1, amending the Government of Wales Act 2006, s. 35).

Secondly, all of the primary legislation enacted by the National Assembly since it acquired primary law-making powers in 2007, and virtually all of the subordinate legislation made by the Assembly until 2007 and by the Welsh Ministers since 2007, is bilingual. Under the provisions of the Government of Wales Acts 1998 and 2006, whenever legislation is enacted or made in both Welsh and English, the two language versions are to be treated as of equal standing for *all* purposes (GoWA 1998, s. 122; GoWA 2006, s.156 – my emphasis). This legislation, which generally applies only in relation to Wales, extends to – that is, is law throughout – England and Wales, by virtue of England and Wales remaining a single legal jurisdiction.

Moreover, the Law Commission of England and Wales in its 2016 report on the *Form and Accessibility of the Law Applicable in Wales* (Law Comm. No. 366) has expressed the clear opinion that “In order for the equal status of both versions of legislation under s. 156 of GoWA 2006 to have any meaning, it is necessary for the interpretation of bilingual legislation to take account of both language versions”. The report goes on to say: “We endorse the approach... [which] recognizes that

the exact meaning to be given to legislation depends on the meaning of both language texts” (paras. 12.17–12.18). This clearly has implications for the skills required by legal professionals.

It needs to be noted and appreciated that these issues are not confined to questions of communication with clients and of access to legal services through the medium of Welsh. They go to the very core of the skills needed to interpret and apply a growing corpus of Welsh statute law, which the UK Parliament has recently expressly recognized as a part of the law of England and Wales (Wales Act 2017, s. 1, inserting section A2 into the Government of Wales Act 2006).

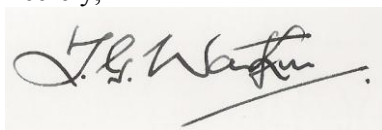
That being the case, serious questions need to be asked as to whether due regard has been had to the particular status and needs of Wales and the Welsh language in shaping the current proposals. If as is claimed, good practice regarding assessment conditions requires as few variables as possible, it is strange that it is regarded as an acceptable variable for some candidates to be required to take assessments in a language which they do not identify as their first language and in which they may not have received much if any of their education, while others take the same assessment in the first language in which they may have received all of their education. This is particularly worrying where the language, the use of which is denied, is, by the law of England and Wales, an official language, a knowledge of which is pertinent to the exercise of core legal skills.

In developing assessments for admission to a legal profession within a jurisdiction in which there is more than one official language, linguistic competence is a relevant issue. Personally, I would support an assessment of competence in the English language for candidates opting to take the assessments generally in Welsh. Equally, one would then expect a requirement that candidates opting to take the assessments in English should be required to show a sufficient level of competence in Welsh, or at the very least a satisfactory awareness of what providing legal services in a bilingual country and interpreting bilingual legislation entails. Legal education and professional assessments should adapt to accommodate, and certainly should not obstruct, the changing skills needed as the UK’s legal and constitutional structures develop. It may be pertinent in this regard to examine how the legal professions in other jurisdictions with more than one official language deal with their assessments, the Republic of Ireland being a case in point.

Finally, you may be aware that, last year, the First Minister of Wales, the Right Hon. Carwyn Jones AM, established a Commission on Justice in Wales under the chairmanship of Lord Thomas of Cwmgiedd, the former Lord Chief Justice of England and Wales. The Commission has been asked to review the operation of the justice system in Wales, and, as part of its remit, to ensure that “jurisdictional arrangements and legal education address and reflect... distinct issues that arise in Wales”. The Commission is approaching its work by obtaining and considering evidence in five work streams, one of which is legal and vocational education and training. The Commission has stated that it will seek to ground its recommendations on a number of principles, including “The treatment of the English and Welsh languages on a basis of equality”. The opinion of the Commission on the issues raised in this letter should sensibly be canvassed before a final decision affecting them is taken.

I hope that you will find the contents of this letter of use in your deliberations upon the proposals for the SQE. The opinions in it are expressed in a personal capacity, but they are not unrepresentative of strong feelings held in significant sections of the legal professions and civic society within Wales.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T.G. Watkin', written over a light-colored rectangular background.

**Professor Thomas Glyn Watkin**