



Judicial Appointments Commission

Welsh Language Scheme

2018 - 19 Annual Monitoring Report to the Welsh Language Commissioner

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1. Introduction

This is the third Welsh Language Scheme Annual Monitoring Report prepared by the Judicial Appointments Commission (JAC) covering the period from 1 April 2018 to 31 March 2019. It demonstrates the progress we have made in implementing our scheme since it was endorsed by the Welsh Language Commissioner's Office in May 2016. The scheme is available on the JAC website: <https://www.judicialappointments.gov.uk/welsh-language-scheme> and <https://www.judicialappointments.gov.uk/cynllun-iaith-gymraeg>

The JAC was previously covered by the Ministry of Justice's Welsh Language Scheme. We developed this voluntary, specialised scheme to better specify how we treat the Welsh and English languages. It explains how candidates for judicial appointment can communicate with the JAC in Welsh or English, according to their personal choice.

The scheme sets out how we give effect to 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, the English and Welsh languages should be treated on a basis of equality. The scope of our commitments should be interpreted as applying to those recruitment activities and services in Wales that we are able to control or influence.

2. Background

The JAC is an executive non-departmental public body sponsored by the Ministry of Justice. We select candidates for judicial office in courts and tribunals in England and Wales, and for some tribunals with UK-wide jurisdiction. Candidates are selected on merit, through fair and open competition, and we are committed to attracting applicants from as wide a field as possible. We work with a range of organisations to promote vacancies to eligible candidates.

The JAC Commission Board approved the draft Welsh Language Scheme in September 2015, which we took to public consultation. The consultation went live on 9 October 2015, and was formally announced by the former JAC Chairman Christopher Stephens and the former JAC Commissioner with responsibility for Wales, the late Professor Noel Lloyd, at the Legal Wales Conference 2015. Responses to the consultation indicated strong support for a JAC-specific Welsh Language Scheme. Many responses offered drafting improvements and suggestions for refinement, and the JAC's consultation response explained how the responses shaped the policy.

3. Recruitment

The JAC is a London-based organisation of around 73 staff. It does not have a permanent delivery presence in Wales. The JAC's Welsh Language Scheme does not cover JAC staff recruitment as there are no identified Welsh language requirements for staff.

Where Welsh language skills are required for a judicial appointment, we have access to two Welsh-speaking panellists within our lay panel member cadre who sit on selection exercise panels. They are joined by Welsh-speaking members of the judiciary who are allocated to the JAC as required to sit on selection panels. Selection exercises where Welsh language skills are required are quality assured by the JAC Commissioner with responsibility for Wales or the Assigned Commissioner to the exercise.

Welsh criteria questions

An additional selection criterion is applied for vacancies in Wales. The criterion is approved by the Lord Chancellor and states:

“Candidates for posts in Wales need to have an understanding, or the ability to acquire the understanding, of administration of justice in Wales, including legislation applicable to Wales and Welsh devolution arrangements”.

Where candidates have applied for posts in Wales, a number of questions that are specific to each exercise are asked at the interview stage, with candidates assessed on their knowledge of relevant Welsh issues.

Selection exercises 2018- 19

The JAC reports annually on the number of exercises completed within a reporting year.¹ The Welsh language scheme was implemented in May 2016 and was applied to selection exercises that went into planning stages from that time. This section details selection exercises that completed and reported from 1 April 2018– 31 March 2019 to give an overview of judicial recruitment in Wales.

Twenty-three selection exercises were finalised and reported in 2018–19. The business area and the judiciary identify Welsh language requirements for vacancies, which the JAC assesses. The JAC continues to run selection exercises where Welsh language has been identified as a requirement for one or more posts.

Of these exercises, the Welsh language was an essential requirement for one post in the selection exercise for Salaried Judge of the Employment Tribunal. Language competence was tested in the case of those candidates who had applied for the Welsh language position, as well as the candidates' knowledge of the administration of justice in Wales. The national exercise launched on 18 June 2018 with 59 vacancies overall, including posts requiring knowledge of the administration of justice in Wales and one requiring competency in the

¹ <https://www.judicialappointments.gov.uk/jac-annual-reports>

Welsh language. Seven candidates were recommended as suitable for appointment in Wales but unfortunately none met the Welsh language requirement.

The Welsh language (reading and writing) was an essential requirement for 4 posts in the selection exercise for Deputy District Judge. Language competence was tested in the case of those candidates who had applied for the Welsh language posts, as well as the candidates' knowledge of the administration of justice in Wales. The national exercise launched 1 March 2018 with 303 vacancies, 4 posts required Welsh language and Welsh Questions. Three candidates were recommended for Welsh posts.

The Welsh language was an essential requirement for 2 posts in the selection exercise for Recorder 2018. Language competence was tested in the case of those candidates who had applied for the Welsh language posts, as well as the candidates' knowledge of the administration of justice in Wales. The national exercise launched on 19 June 2018 with 160 vacancies overall. One candidate was recommended for a Welsh post.

The following selection exercises identified vacancies in Wales that did not have Welsh language requirements but tested candidates' knowledge of the administration of justice in Wales:

Fee-paid First-tier Tribunal Judges. This national exercise was launched on 31 January 2018 with 250 vacancies overall. Twenty-seven candidates were successful in meeting the requirement for Welsh posts.

Circuit Judge. This national exercise launched 15 March 2018 with 94 vacancies overall, 3 of which were posts in Wales. Three candidates were recommended for Welsh posts.

The following selection exercises identified vacancies in Wales that did not have Welsh language requirements, and did not test candidates' knowledge of the administration of justice in Wales:

Fee-paid Medical Members, First-tier Health, Education and Social Care Chamber (England) and Mental Health Review Tribunal for Wales (MHRT). This exercise launched on 23 January 2018 with up to 80 vacancies overall for fee-paid Medical Member of the First-tier Tribunal, Health Education and Social Care Chamber, Mental Health (England); and up to 10 vacancies overall for fee-paid Medical Member of the Mental Health Review Tribunal for Wales (MHRT Wales). The JAC Commissioner with responsibility for Wales was of the view that the requirement for the role was medical expertise and as such the testing of candidates' knowledge of the administration of justice in Wales would not add further value to the selection process. Fifteen candidates were recommended for immediate appointment to MHRT Wales. Four candidates were recommended for both HESC and MHRT (Wales).

Section 83 of the Government of Wales Act 2006 allows the Welsh Government to seek assistance from other public bodies. The JAC assisted the Welsh Government for the following exercises:

Fee-paid Drainage Members, Agricultural Lands Tribunal, Wales. This exercise launched on 28 February 2018 with 5 vacancies overall. As this was a highly specialised non-legal role, the JAC decided that additionally testing candidates' knowledge of the administration of justice in Wales would not add further value to the selection process. Two candidates were recommended for immediate appointment.

4. Monitoring the Welsh Language Scheme

Selection exercises

The JAC's Welsh Language Scheme applies to selection exercises with posts in Wales that went into planning stages on or after May 2016. External advertising is only used by the JAC in exceptional cases. The 'advertising' section of our Welsh Language Scheme outlined provisions for any cases in which external advertising was used. No external advertising was used for selection exercises in Wales over 2018–19.

Over the period 2018–19 we published Welsh translations of selection exercise material in the following exercises:

- Fee-paid Medical Members of the First-tier Tribunal, Health, Education and Social Care Chamber (Mental Health); and Fee-paid Medical Members of the Mental Health Review Tribunal for Wales. Launched 23 January 2018
- Deputy District Judge. Launched 1 March 2018
- Circuit Judge. Launched 15 March 2018
- Salaried Judge of the Employment Tribunal. Launched 18 June 2018
- Recorder. Launched 19 June 2018

The JAC Welsh Language Scheme sets out that we will advertise positions that require working in Wales bilingually on JAC online media, however during this period there was one selection exercise with posts in Wales that launched without a Welsh language advert: Fee-paid Drainage Members, Agricultural Lands Tribunal, Wales. Unfortunately, an administrative error resulted in the translated version being missed. However, the selection exercise team engaged continuously with the Welsh Government in the form of the Welsh Tribunal Unit and the Lead Judge and we understand that the roles were advertised internally through word of mouth.

Action has been taken to raise the importance of complying with the JAC Welsh Language Scheme with refresher training sessions for staff.

Complaints

The JAC did not receive any formal complaints directly in relation to the Welsh Language Scheme.

However, the Welsh Tribunal Unit (WTU) notified the JAC of a complaint made to the Welsh Language Commissioner regarding non-compliance with the Welsh Language Standards.

The complaint concerned the handling of a recruitment exercise by the Welsh Tribunal Unit and the response received from the JAC, by a candidate, to the sending of an email in Welsh. In line with the new guidance issued by the Welsh Tribunal Unit, the JAC has now revised its internal guidance for staff to raise awareness of the JAC Welsh Language Scheme.

Progress against action plan

The reporting standards previously established for the JAC Welsh Language Scheme will remain the same over 2019–20: availability of the Scheme; advice and guidance; digital capability; new and revised policies and monitoring and review.

Updates to the action plan over 2018–19 are in bold below.

Theme and reference	Activity	Target Date	Progress	Status
Availability	Publish the Scheme on the JAC website and intranet	March 2016	Consultation to open October 2015 and close December 2015, for JAC response in March 2016	Complete. Publication delayed by the pre-election period for the National Assembly for Wales 2016 election, and published on 23 May 2016.
Advice and guidance	Develop internal guidance to accompany policy including assessment of language skills and knowledge of divergence in law, devolution arrangements etc.	March 2016 initial publication. Review of relevant policy documents ongoing	Complete Ongoing	Complete – guidance available to all staff from March 2016 A training session was held for operational staff in April 2016 prior to implementation. Refresher training sessions have also been undertaken during the period 2018-19
Digital capability	Develop Judicial Appointments Recruitment System (JARS) to include a Welsh language online application form	Ongoing	Deferred	The JAC is currently working towards the implementation of a new digital platform. The availability of application forms in Welsh will be considered as part of this work.
New and revised policies	Consider the impact of new and revised policies in the Welsh Language Scheme	Ongoing	Implementation will be monitored on an ongoing basis	Ongoing. Candidates are now able to provide any narrative section in a Qualifying Test in Welsh, which is then translated.
Monitoring and review	Prepare an Annual Monitoring Report for the Welsh Language Commissioner which will be made available Commission Board and Executive; MoJ Welsh Language Co-ordinators, MoJ Sponsorship and Welsh Liaison Judge	Annual		Complete: Annual Monitoring Report 2016–17 published October 2017 Annual Monitoring Report 2017–18 published November 2018 Annual Monitoring Report 2018-2019 published December 2019

5. The Welsh Matters Committee

The Welsh Matters Committee is a sub-committee of the JAC Commission Board. The Committee was chaired during this period by the late Professor Noel Lloyd with Committee members, JAC Commissioner (judicial) Mrs Justice Philippa Whipple and JAC Commissioner Brie Stevens-Hoare QC.

The Committee was formed following a meeting between the First Minister of Wales and the Chairman of the JAC, Rt Hon Professor Lord Ajay Kakkar, along with Professor Noel Lloyd. The inaugural meeting of the Welsh Matters Committee was held on 9 March 2017, and the Committee sits every other month.

The primary purpose of the Committee is to monitor the potential impact of devolution in Wales on the appointments process for judicial posts across England and Wales, and to ensure that the Commission is aware of the needs of Wales.

Over the reporting year, the Committee has:

- renewed the arrangement between the JAC and the Welsh Government to deliver selection exercises for Welsh Ministers. This agreement will run until April 2023
- welcomed Sir Wyn Williams, President of the Welsh Tribunals to a Welsh Matters Committee meeting
- continued the monitoring of developments of the Wales Training Committee to make sure the JAC testing of Welsh knowledge takes account of the Judicial College's work in dealing with the training implications of devolved legislation
- monitored the delivery of selection exercises in Wales

The Welsh Matters Committee has responded on behalf of the JAC to the following consultations that may affect the Welsh legal landscape:

- Welsh Government consultation on a Law Council of Wales and Terms of Reference
- Welsh Government Consultation on the Draft Legislation (Wales) Bill

Professor Noel Lloyd

It is with great sadness that in June 2019, the JAC announced the death of Professor Noel Lloyd, JAC Commissioner with responsibility for Wales and Chairman of the JAC Welsh Matters Committee. Noel was passionate about the promotion of the judiciary and administration of justice in Wales, establishing the JAC Welsh Language Scheme, Welsh selection assessments and founding the JAC Welsh Matters Committee.