



# **Judicial Appointments Commission**

## **Welsh Language Scheme**

**2016–17 Annual Monitoring Report to the Welsh Language Commissioner**

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# 1. Introduction

This is the first Welsh Language Scheme Annual Monitoring Report prepared by the Judicial Appointments Commission (JAC) covering the period from 1 April 2016 to 31 March 2017. 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://jac.judiciary.gov.uk/welsh-language-scheme> and <https://jac.judiciary.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 are able to 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.

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## 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 JAC Commissioner with responsibility for Wales, 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.

The action plan attached to the 2016 scheme set out our main implementation targets, some of which were for delivery over the coming year, and some of which are delivered on an ongoing basis.

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### 3. Recruitment

The JAC is a London-based organisation with fewer than 50 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 two Welsh-speaking panellists 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 Professor Noel Lloyd, who is a Welsh speaker.

#### Welsh criteria questions

A non-statutory eligibility 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".

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.

All selection panels that sit on selection exercises with posts in Wales are briefed by Professor Noel Lloyd on the specific needs of Wales.

#### Selection exercises 2016–17

The JAC reports annually on the number of exercises completing within a reporting year. The Welsh language scheme was implemented in May 2016 and was applied to selection exercises that went into the planning stages from that time. It applied to three exercises; one of which reported in 2016-17 (Resident Judge, First-tier, Immigration and Asylum Chamber in Wales) and two of which will report in 2017-18. This section details selection exercises completing in 2016-17 in order to give an overview of judicial recruitment in Wales.

26 selection exercises were completed and reported over 2016–17 across England and Wales. The business area including HMCTS, the Judicial Office and the judiciary identify the Welsh language requirements for vacancies. The vacancy requests from the business area determine requirements, to which the JAC responds.

- one selection exercise required Welsh language competence; the Welsh non-statutory eligibility criterion was also applied:

- **Section 9(1) judge**<sup>1</sup> - a national exercise with 38 vacancies overall, one of which was a vacancy in Wales requiring a Welsh speaker. Unfortunately no candidates applied for this post and the vacancy was later withdrawn
- Four selection exercises for vacancies in Wales did not require Welsh language competence but the non-statutory eligibility criterion did apply:
  - **Circuit Judge 2016**: a national exercise which launched on 5 February 2016 with 55 vacancies overall, three of which were based in Wales. Two selections were made to the Welsh posts, leaving one vacancy unfilled
  - **Senior Circuit Judge, Designated Civil Judge Wales**: a single post, the selection exercise launched 25 February 2016. One candidate was selected
  - **Deputy District Judge (Magistrates' Court)**: a national exercise which launched on 28 June 2016 with 18 vacancies overall, one of which was based in Wales, and one selection was made to this post
  - **Resident Judge, First-tier, Immigration and Asylum Chamber in Wales**: a single post. The selection exercise launched 9 November 2016, and a candidate was selected.
- One exercise for a vacancy in Wales did not have Welsh language requirements, and the Welsh criteria questions were not applied. This was a part-time post for medical members of a tribunal, and as a non-legal specialist post the non-statutory eligibility criteria did not apply:
  - **Fee-paid Medical, First-tier Health, Education and Social Care Chamber (Mental Health) and Fee-paid Medical, Mental Health Review Tribunal for Wales**: launched on 10 February 2016 with 10 vacancies in Wales. Ten selections were made but one of the selected candidates later declined the appointment.
- Two selection exercises ran under Section 83 of the Government of Wales Act 2006, which allows the Welsh Government to seek assistance from other public bodies for administrative, professional or technical services. In these cases the level of Welsh language competence was determined by the Welsh Ministers. The JAC provided assistance to the Welsh Government for the following exercises in which Welsh language was desirable, and the non-statutory eligibility criterion applied:
  - **Fee-paid Education Member, Special Educational Needs Tribunal Wales**: launched on 30 July 2016 with four vacancies, two for immediate appointment and two to be on a list for future vacancies. Four selections were made, two for the immediate vacancies and two for the future vacancy. One of the candidates for a future vacancy did not accept the appointment. One of the selected candidates for the immediate vacancies was a Welsh speaker

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<sup>1</sup> Section 9(1) of the Senior Courts Act 1981 provides for the Lord Chief Justice or his nominee to authorise Circuit Judges, Recorders and qualifying tribunal judges to sit in the High Court to meet business needs.

- **President of the Adjudication Panel Wales:** a single post with the selection exercise launching on 10 February 2016. There was no Welsh language requirement, and the Welsh criteria questions applied. One candidate was selected.
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## 4. Monitoring the Welsh Language Scheme

### Selection exercises

The JAC's Welsh Language Scheme was published on 23 May 2016 and applied to selection exercises that went into planning stages following publication. The scheme applied to the following selection exercises (none of which had Welsh language requirements) and Welsh versions of the job advertisements were published:

- Resident Judge, First-tier Tribunal, Immigration and Asylum Chamber in Wales (launched November 2016)
- Recorder 2017 (launched February 2017)
- Circuit Judge 2017 (launched March 2017)

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 2016–17.

No public consultations were conducted over 2016–17, and no assessments of candidates' Welsh language abilities have been required. No complaints or queries have been made in respect of our Welsh Language Scheme, and there are no instances where the JAC failed to uphold the scheme's provisions.

All development of our IT system has been put on hold due to a significant IT failure in February 2017. The JAC has terminated a contract with an existing supplier and is working with another supplier to resolve the issues identified. Welsh language development will be considered over 2018–19 once existing issues have been addressed.

### Social media

Five tweets have been issued from our Twitter account in Welsh: the first to publicise the Welsh Language Scheme; three tweets were to raise awareness of Resident Judge First-tier Tribunal, Immigration and Asylum Chamber; and one publicising Recorder 2017.

### Progress against action plan

The original version of the action plan was annexed to the Welsh Language Scheme published in May 2016. Updates are in **bold** below.

<b>Theme and reference</b>	<b>Activity</b>	<b>Target Date</b>	<b>Progress</b>	<b>Status</b>
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	<b>23 May 2016 - Publication delayed by the pre-election period for the National Assembly for Wales 2016 election</b>
Advice and guidance	Develop internal guidance to accompany policy including assessment of language skills and knowledge of divergence in law, devolution arrangements etc.  JAC to develop in conjunction with delivery partners (HMCTS, Judicial Office)	March 2016	Initial draft of internal policy complete; will be further developed following consultation period	<b>Complete – guidance available to all staff from March 2016</b>  <b>A training session was held for operational staff in April 2016 prior to implementation. A refresher session will be held on an annual basis to coincide with the Welsh Language Scheme review</b>
Digital capability	Develop Judicial Appointments Recruitment System (JARS) to include a Welsh language online application form	Ongoing	Welsh language forms requested via contract with third party developers; delivery date to be confirmed when contract in place	<b>Deferred to 2018–19 due to IT issues (see page 7)</b>
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	<b>Ongoing. No new selection policies were introduced that had potential to impact on the Welsh Language Scheme</b>
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 (December)		<b>Complete – timings were adjusted to align with the Ministry of Justice’s Annual Monitoring Report, which required the same information on judicial recruitment</b>

## 5. The Welsh Matters Committee

The Welsh Matters Committee is a new sub-committee of the JAC Commission Board. It is chaired by the JAC Commissioner with responsibility for Wales, Professor Noel Lloyd. The other committee members are JAC Commissioner (Judicial) Mrs Justice Philippa Whipple and JAC Commissioner (Professional – Barrister) Martin Forde 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 will continue to sit on a bi-monthly basis.

At the meeting the Committee agreed that the group's primary purpose was 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.

Professor Lloyd briefed the Committee on the background of devolution, particularly the effect of the Wales Act 2017 and previous legislation, and on the growing divergence between the law in Wales and the law in England. The importance of the accessibility of the law in Wales, given that there is no codification of the divergences in law, was emphasised.

The Committee also discussed the background to the JAC's Welsh Language Scheme, the logistics of assessing Welsh language skills and the current bank of JAC 'Welsh dimension' questions designed to assess candidates' understanding of issues affecting Wales for relevant posts.

## 6. Priorities for the coming year

The action plan for 2017-18:

Theme and reference	Activity	Target Date	Progress	Achievement Date
Availability	Publish 2017–18 Scheme with revised action plan on the JAC website	July 2017		
Advice and guidance	Review internal guidance Refresher training on Welsh Language Scheme for staff	August 2017		
Digital capability	Review IT arrangements and consider feasibility for Welsh language development	April 2018		
New and revised policies	Consider the impact of new and revised policies on the Welsh Language Scheme	Ongoing	Implementation will be monitored on an ongoing basis	
Monitoring and review	Prepare an Annual Monitoring Report for the Welsh Language Commissioner which will be made available to the JAC Commission Board and Executive; MoJ Welsh Language Co-ordinators, MoJ Sponsorship and Welsh Liaison Judge	Annual		