



# **Judicial Appointments Commission**

## **Welsh Language Scheme**

**2019 - 20 Annual Monitoring Report to the Welsh Language Commissioner**

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## 1. Introduction

This is the fourth Welsh Language Scheme Annual Monitoring Report prepared by the Judicial Appointments Commission (JAC) covering the period from 1 April 2019 to 31 March 2020. 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://judicialappointments.gov.uk/welsh-language-scheme/>

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 was established on 3 April 2006 under the Constitutional Reform Act 2005. 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 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 70 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 one Welsh-speaking panel member 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 special knowledge of Wales or the Assigned Commissioner to the exercise.

#### **Requirement for an understanding of the administration of justice in Wales**

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 understanding of relevant Welsh issues.

#### **Selection exercises 2019- 20**

The JAC reports annually on the number of exercises completed within a reporting year.<sup>1</sup> 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 2019– 31 March 2020 to give an overview of judicial recruitment in Wales.

Thirty-five selection exercises were finalised and reported in 2019–20. The business area and the judiciary identify Welsh language requirements for vacancies, which the JAC then assesses candidates against. The JAC continues to run selection exercises where Welsh language has been identified as a requirement for one or more posts.

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

**The following selection exercises identified vacancies in Wales that had an essential Welsh language requirement:**

- **Recorder.** The Welsh language was an essential requirement for two posts in the selection exercise for Recorder. The national exercise launched on 19 June 2018 with 160 vacancies overall, including posts requiring understanding of the administration of justice in Wales. Nineteen candidates were recommended as suitable for appointment to Welsh posts, including one candidate for a Welsh language role.
- **Deputy District Judge (Magistrates Court).** Welsh language was an essential requirement for two posts in the selection exercise for Deputy District Judge (Magistrates Court). This exercise launched on 20 September 2018 with 30 vacancies. Candidates were also tested on their understanding of the administration of justice in Wales. Four candidates were recommended for Welsh posts, including two for the Welsh language roles.
- **District Judge.** Welsh language was an essential requirement for one Welsh post in the selection exercise for District Judge. This exercise launched on 1 November 2018 with 92 immediate and 18 future vacancies. Candidates were also tested on their understanding of the administration of justice in Wales. Four candidates were recommended for immediate appointment to Welsh posts, including one candidate for the Welsh language role.
- **Fee-Paid Judge of the First-tier Tribunal and Fee-Paid Judge of the Employment Tribunals (England and Wales).** Welsh language was an essential requirement for three posts in the exercise for Fee-Paid Judge of the First-tier Tribunal and Fee-Paid Judge of the Employment Tribunal (England and Wales). This exercise launched on 20 March 2019 for up to 222 vacancies. Candidates were also tested on their understanding of the administration of justice in Wales. Ten candidates were recommended for Welsh posts but unfortunately none of the candidates who expressed an interest in the Welsh posts were recommended for the Welsh language roles.
- **Deputy District Judge.** Welsh language was an essential requirement for three posts in the exercise for Deputy District Judge. This exercise was launched on 20 March 2019 for 200 immediate vacancies. Candidates were also tested on their understanding of the administration of justice in Wales. Four candidates were recommended for Welsh language roles and thirteen candidates were recommended for Welsh posts based on their understanding of the administration of justice in Wales.
- **Legal Members of the Welsh Language Tribunal.** Welsh language was an essential requirement for one post in the exercise for Legal Members of the Welsh Language Tribunal. Candidates were also tested on their understanding of the administration of justice in Wales. One candidate was recommended for the role.

**The following selection exercises identified vacancies in Wales that did not have a Welsh language requirement but tested candidates' understanding of the administration of justice in Wales:**

- **Salaried First-tier Tribunal Judge.** The exercise for Salaried First-tier Tribunal Judge launched on 6 November 2018 with 100 vacancies, later increased to 120 with five posts in Wales. Those candidates who were interested in a Welsh post were assessed on their understanding of the administration of justice in Wales. Seven candidates were subsequently recommended for Welsh roles with deployment to be considered by the Chamber Presidents.
- **Circuit Judge.** The exercise for Circuit Judge launched on 23 January 2019 with 29 immediate and 21 future vacancies. The number of Welsh posts was not identified but those candidates who were interested in a Welsh post were assessed on their understanding of the administration of justice in Wales. Three candidates were recommended for appointment to Welsh roles.
- **District Judge (Magistrates Court).** The exercise for District Judge (Magistrates Court) launched on 5 March 2019 with 25 vacancies. The number of Welsh posts was not identified but those candidates who were interested in a Welsh post were assessed on their understanding of the administration of justice in Wales. Seventeen candidates were recommended for Welsh roles.
- **Regional Judge (IAC & SEC).** The exercise for Regional Judge (IAC & SEC) launched on 24 April 2019 with five vacancies. Those candidates who were interested in a Welsh post were assessed on their understanding of the administration of justice in Wales. One candidate was recommended for a Welsh role.
- **SCJ, Resident Judge (Teesside & Wales).** The exercise for Senior Circuit Judge, Resident Judge (Teesside & Wales) launched on 25 July 2019 with two vacancies, one for Teesside and one for Wales. Only a candidate for the Teesside post was recommended.

**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:**

- The exercise for President of the Welsh Language Tribunal launched on 26 February 2019 with one vacancy. As this was a highly specialised role, the candidates were tested on their ability to speak, read and write Welsh. One candidate was recommended for the role.
- The exercise for Fee-paid Educational Panel Members for the Special Educational Needs Tribunal for Wales (SENTW) was launched on 15 October 2019 with six vacancies. Candidates were tested on their ability to speak Welsh. Five candidates were recommended for the roles.

- The exercise for Legal Members of the Welsh Language Tribunal was launched on 15 May 2019 with one vacancy. Candidates were tested on their ability to speak Welsh. One candidate was recommended for the role.

## 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 2019-20.

Over the period 2019–20 we published Welsh translations of selection exercise material in the following exercises:

- President of the Welsh Language Tribunal which launched on 26 February 2019
- Fee-paid Judge of the First-tier Tribunal and Employment Tribunal which launched on 20 March 2019.
- Deputy District Judge which launched on 20 March 2019
- Fee- paid Educational Panel Members for the Special Educational Needs Tribunal for Wales (SENTW)
- Legal Members of the Welsh Language Tribunal

The JAC Welsh Language Scheme sets out that we will advertise positions that require working in Wales bilingually on JAC online media. However unfortunately during the period of this report, due to an administrative error, a Welsh translation of the advertisement was not published on the JAC website for one such exercise: the role of Judge of the First-tier Tribunal which launched on 8 November 2018. In this exercise, of those candidates who expressed an interest in a Welsh post, seven candidates were recommended for appointment, having been assessed on their understanding of the administration of justice in Wales.

Staff have been reminded of the requirement for simultaneous translations in exercises involving Welsh posts and a series of refresher training workshops is in progress.

Additionally, during this reporting period, the JAC introduced a new digital platform to replace the existing system. As a result of this change, it was not initially possible to provide Welsh translations of advertisements for judicial roles in the same website location. Temporary solutions were however put in place with applicants being provided links for the details.

This issue has now been permanently resolved with all advertisements for selection exercises with roles in Wales being advertised simultaneously in English and Wales in the same website location.

## **Complaints**

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

## **Progress against action plan**

The reporting standards previously established for the JAC Welsh Language Scheme remained 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 2019–20 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.  <b>Refresher training sessions have also been undertaken during the period 2019-20</b>
Digital capability	Develop Judicial Appointments Recruitment System (JARS) to include a Welsh language online application form	Ongoing	Deferred	<b>The availability of application forms in Welsh will be taken forward in the next 12 months.</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	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  <b>Annual Monitoring Report 2019-2020 published November 2020</b>

## 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 JAC Commissioner Brie Stevens-Hoare QC as interim chair of the Committee with District Judge Mathu Asokan as Committee member.

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:

- In January 2020, the JAC Chairman, Lord Kakkar and Brie Stevens-Hoare QC, met with the First Minister of Wales, Mark Drakeford, to discuss the selection and recommendation of candidates for judicial roles in Wales
- Welcomed the Head of Welsh Tribunals at a Welsh Matters Committee meeting with a view to improving communication of judicial roles in Wales
- Participated in the Legal Wales Conference in October 2019
- 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 consultation that may affect the Welsh legal landscape:

- The Future of Welsh law: classification, consolidation, codification

## **6. JAC Commissioner with special knowledge of Wales**

The Rt. Rev. Dr. Barry Morgan was appointed as the JAC Lay Commissioner with special knowledge of Wales on 6 July 2020 and takes over the Chair of the JAC Welsh Matters Committee.

Barry is a Welsh Anglican Bishop and academic from Neath in Wales. He held both parish and university posts before becoming Bishop of Bangor in 1993, Llandaff in 1999 and was Archbishop of Wales from 2003 - 2017. During his time in office it became possible for women to be ordained as priests and bishops, and for prayers to be offered for same sex couples in public services in the Church in Wales

As well as being Pro Chancellor of the University of Wales, Barry is a Fellow of five Welsh Universities, a Fellow of the Learned Society of Wales and a Knight of the Order of St. John. He has published a number of articles in books and journals, as well as a book on the poetry of R S Thomas. Barry also chaired a Commission on Homelessness in Wales in 2007 on behalf of Shelter Cymru.