
Welsh Language Scheme

2015 Consultation

**A consultation produced by the
Judicial Appointments Commission**

Published on 8 October 2015

This consultation will end on 4 December 2015

**This information is also available on the Judicial Appointments Commission
website: <http://jac.judiciary.gov.uk>**

Judicial Appointments Commission

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About this consultation

To:

The Welsh Language Act 1993 imposes a duty on public organisations to operate a scheme, and this duty in relation to the JAC has previously been discharged under the Ministry of Justice's umbrella policy. The general objective of Welsh Language Schemes is that the Welsh and English languages should be treated on the basis of equality, as far as is appropriate and reasonably practical, within the conduct of public business and the administration of justice in Wales.

In drafting this consultation we have worked closely with our delivery partners including the Ministry of Justice; Her Majesty's Courts and Tribunals Service; the Judicial Office and members of the judiciary.

This consultation is aimed at those with an interest in judicial appointments and/or those with an interest in Wales, including the judiciary; potential candidates; legal professional bodies and groups with an interest Wales. A list of the groups to which a copy has been sent is on page 18.

The Commission will consider responses to this consultation in the development of its policy.

Duration:

From 8 October 2015 to 4 December 2015

**Enquiries and responses
(including requests for the
paper in an alternative format)
to:**

Operational Policy
Judicial Appointments Commission
102 Petty France
London SW1H 9AJ
Tel: 020 3334 4187
Email: communications@jac.gsi.gov.uk

Response paper:

A response to this consultation exercise is due to be published by March 2016 at: <https://consult.justice.gov.uk/>

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About the Judicial Appointments Commission

1. The Judicial Appointments Commission (JAC) launched on 3 April 2006 to select candidates for judicial office through fair and open competition. We are responsible for making appointment recommendations to the Appropriate Authority (the Lord Chancellor, Lord Chief Justice or Senior president of Tribunals).
2. Our creation was one of the major changes brought about by the Constitutional Reform Act 2005 (CRA), which also reformed the office of Lord Chancellor and established the Lord Chief Justice as head of the judiciary of England and Wales. As an NDPB (non-departmental public body) we are sponsored by the Ministry of Justice. Our aims and objectives are agreed with the Lord Chancellor and set out in our business plan.
3. We are committed to ensuring that we make selections from as wide a field as possible and we work closely with a range of organisations to ensure that eligible candidates are aware of the opportunities and have the information they need to apply.
4. We recommend candidates for appointment as judges of the High Court and to all offices listed in Schedule 14 of the Constitutional Reform Act 2005 (CRA). Additionally, the Lord Chancellor may request our assistance in connection with other appointments.
5. The selection exercise programme for the year is developed with the Ministry of Justice (MoJ) and Her Majesty's Courts and Tribunals Service (HMCTS). The programme is based on current and forthcoming judicial requirements forecast by HMCTS and a small number of judicial vacancies for tribunals not overseen by the MoJ. The programme provides some flexibility to enable us to respond to changing business priorities. The full list of posts covered includes both fee-paid and salaried roles as well as positions not requiring a legal background.
6. We are also asked to convene panels that recommend candidates for appointment to other senior posts, including the Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, Chancellor of the High Court and Lords Justices of Appeal.
7. Commissioners are drawn from the judiciary, the legal profession, non-legally qualified judicial office holders and the public. All are recruited and appointed through open competition with the exception of three judicial members who are selected either by the Judges' Council or the Tribunals' Council. Full details of the composition of the Commission and a list of Commissioners is available on our website [here](#).
8. The Commission is responsible for ensuring the JAC achieves its aims and objectives while promoting the efficient and effective use of staff and other

resources. Commissioners work closely with JAC staff, the Chief Executive and senior management.

9. Schedule 14 to the CRA, as amended by the Crime and Courts Act 2013 (CCA), sets out the judicial appointments for which we make selections. We may be required to either select a candidate for immediate appointment under Section 87 of the CRA, or to identify candidates for future vacancy requests under Section 94. We do not select Magistrates.
10. We select one candidate for each vacancy, providing there are sufficient numbers of selectable candidates available for each vacancy, and recommend that candidates for appointment to the Appropriate Authority (the Lord Chancellor, Lord Chief Justice or Senior President of Tribunals). The CCA transferred responsibility for making most court appointments below High Court, and in tribunals those of First-tier and Upper Tribunal, to the Lord Chief Justice (LCJ) or Senior President of Tribunals (SPT).
11. The Appropriate Authority can accept or reject a recommendation, or ask the Commission to reconsider it. If the Appropriate Authority rejects a recommendation or asks for reconsideration, they must provide us with written reasons.
12. Under the CRA, our role in senior appointments is to convene a selection panel, which becomes a committee of the Commission. Senior appointments panels determine their own selection processes. This includes selections for the Lord Chief Justice, other Heads of Division, Lords Justices of Appeal, and the Senior President of Tribunals. We are not responsible for selecting judges of the UK Supreme Court although a lay Commissioner does sit on the selection panel. More details on senior appointments are available [here](#).
13. We have three key statutory duties: to select candidates solely on merit¹; to select only people of good character²; and to have regard to the need to encourage diversity in the range of persons available for selection for appointments³.

¹ s63(2) Constitutional Reform Act 2005

² s63(4) Constitutional Reform Act 2005

³ s64(1) Constitutional Reform Act 2005

Introduction

14. We previously operated under the MoJ's umbrella Welsh Language Scheme and managed a free-standing policy to test for Welsh skills where appropriate. We test candidates for judicial appointment in Wales with a number of questions on the 'Welsh Dimension'; asking questions allowing candidates to demonstrate their understanding of the administration of justice in Wales and Welsh devolution arrangements as appropriate.
15. Development of this Welsh Language Scheme (the Scheme) follows various discussions with the Lord Chief Justice, members of the judiciary and HMCTS that have an interest in Wales in which it became clear that there was an appetite for a bespoke JAC Welsh Language Scheme.
16. One of our wider objectives is to deliver services as efficiently as possible, and a key achievement has been the introduction of our web-based recruitment tool the Judicial Appointments Recruitment System (JARS) which we launched in January 2015. JARS has the potential for offering candidates in Wales the opportunity to access and complete an online Welsh language application form.
17. The Scheme details our current commitments and current standard of service in relation to Welsh language. As JARS is at the developmental stage, we anticipate that by our first Annual Monitoring Report to the Welsh Language Commissioner, we will be able to provide firm details on the development of our digital solutions, and to begin to remove the 'reasonable' and 'practical' caveats as our delivery of digital Welsh language solutions develops and imbeds.
18. We are a London-based organisation and do not normally provide direct services to the general public. Our activity in Wales usually involves contact with the judiciary; panel members; candidates for judicial appointments and other delivery partners in Wales such as HMCTS or independent Tribunals. We do not therefore consult on provisions in respect of responding to telephone calls, letters or emails in Welsh, or using Welsh signs.
19. The scope of our commitments should be interpreted as applying to those candidate-facing recruitment activities and services in Wales that we are able to control or influence.
20. This voluntary, specialised scheme has been developed to better specify how we treat the Welsh and English languages when using our independent approach to assessing candidates' suitability for judicial appointment in Wales. It also explains how we enable candidates to communicate with us through the medium of English or Welsh, according to their personal choice, which we will facilitate at every opportunity so far as is appropriate in the circumstances and reasonably practicable.

Background

This paper sets out for consultation the JACs proposed Welsh Language Scheme. The consultation is aimed at those with an interest in judicial appointments, including the judiciary, potential candidates, legal professional bodies and groups with Welsh interests.

A Welsh language consultation paper is available at <https://consult.justice.gov.uk/>

An Impact Assessment has not been carried out as there are no groups likely to be adversely affected. The proposals are inward facing and do not levy additional costs or savings on other parties.

The proposals

1. The standard of service

The following provisions numbered 6-9 within the Scheme comprise 'The standard of service' section.

6. Our starting point is the principle that Welsh language has official status under the Welsh Language (Wales) Measure 2011 and previously under the Welsh Language Act 1993, and should be treated no less favourably than the English language. In recommending suitable candidates for judicial appointment in Wales, we will deliver an equally high quality of services regardless of whether they are delivered in Welsh or in English.
7. As a London based organisation, our activity in Wales normally involves contact with the judiciary; panel members; candidates for judicial appointments and other delivery partners in Wales such as Her Majesty's Courts and Tribunals Service (HMCTS) or independent Tribunals.
8. Selection exercises for judicial appointments are initiated by HMCTS, the Judicial Office and the court or tribunal concerned. In running selection exercises for judicial posts in Wales, it is the responsibility of the court or tribunal concerned to identify the Welsh language skills for the vacancies, the level of those skills and any further requirements related to knowledge of the administration of justice in Wales and/or devolution arrangements. We also conduct selection exercises to some devolved Tribunals on behalf of the Welsh Government. In such cases it is the responsibility of the Welsh Government to determine the linguistic requirements.
9. Once the criteria are agreed, it is our function to conduct selection exercises and determine appropriate assessment methods.

Question 1: Do you agree with, or have any comments on, our proposed standard of service?

2. Advertising

The following provisions numbered 10-15 within the Scheme comprise 'Advertising' section.

10. We advertise selection exercises on our website, and publicise them through our email newsletter 'Judging your future' and through Twitter. Normally we advertise only online, and this section sets out our approach to advertising posts in Wales by this medium, and exceptionally, advertising in media external to the JAC.
11. Vacancy advertisements, descriptions and specifications will reflect the linguistic needs of the post, and where necessary, specify the level of skill required.
12. We will advertise positions that require working in Wales and for which there is a Welsh language requirement on JAC online media bilingually, by which we mean using both Welsh and English text mirrored within the same document.
13. We will advertise positions that require working in Wales that do not have a Welsh language requirement on JAC online media bilingually whenever reasonably practicable.
14. If, exceptionally, positions that require working in Wales and for which there is a Welsh language requirement are advertised other than on the JAC website, we will advertise bilingually. In that event it may be necessary to have separate Welsh and English notices depending on the requirements of the exercise and the level of skill required, for example if a notice carries a high level of detail which would make a bilingual notice too lengthy. For notices in Welsh media outlets we may examine the likely distribution area of the particular outlets, their relevance to the jurisdiction and known effectiveness when compared to other advertising models such as internet or social media.
15. Where external advertising is, exceptionally, used for posts in Wales that do not have a Welsh language requirement, we will determine, on a case by case basis, whether it is reasonably practicable to advertise bilingually.

Question 2. Do you agree with, or have any comments on, our advertising provisions?

3. Other communications and material

The following provisions numbered 16-27 within the Scheme set out how we will treat the Welsh language in our general publications and in our selection exercise material.

General publications

16. We will treat the Welsh language no less favourably than the English language where reasonable and practical. This section sets out how we will give effect to the principle when we publish material for distribution in Wales.
17. Where we publish relevant documents, such as consultations specifically affecting Wales, we will aim to produce publications bilingually, by which we mean using both Welsh and English text mirrored within the same document.
18. If this will make documents too lengthy or impacts unfavourably on functionality, materials will be made available in separate English and Welsh versions. Where this occurs the versions will be equal in terms of format, size, quality and prominence when available online. They will also be made available together, with translation requirements considered and undertaken ahead of publication.
19. Where general publications are not specifically related to Wales, we will publish in English and provide Welsh copies upon request.

Selection exercises with a Welsh language requirement

20. Where a vacancy has a Welsh language requirement we will produce exercise materials such as information packs bilingually.
21. If a bilingual document becomes too lengthy or impacts unfavourably on functionality, materials will be available in separate English and Welsh versions. Where this occurs the versions will be equal in terms of format, size, quality and prominence when available, and they will also be made available together.
22. Where we cannot adapt standing electronic fields on our online application form, candidates can answer the questions in Welsh, and we will also accept a further English copy via email if candidates wish to submit an application in both languages. On request, we will provide a Welsh version of the application form in hard copy.
23. Approved translators will be used when translation of these documents is necessary.

Selection exercises in Wales with no Welsh language requirement

24. Where there is a vacancy for a post without an identified Welsh language requirement, we may provide translated exercise materials or separate Welsh and English versions if this would be a reasonable approach to increasing the number and quality of applications from Wales. We will do so upon request in any event.
25. When completing electronic application forms online, we will accept Welsh answers, and we will also accept a further English copy via email if a candidate wishes to submit the application in both languages, regardless of whether the post has a Welsh language requirement.
26. On request we will provide a Welsh language version of the application form in hard copy.
27. Where applications are received in Welsh for a post with no identified Welsh language requirement, the remainder of the selection exercise will be undertaken in English.

Question 3. Do you agree with, or have any comments on, our provisions on other communications and material including general publications and selection exercise materials?

4. Assessment of Welsh language ability

The following provisions comprise the 'Assessment of Welsh language ability' section of the proposed scheme and is supported by JAC internal guidance on how to assess the competence in the Welsh language of applicants for posts for which there is a Welsh language requirement.

For example, we have appointed two Welsh speaking panel members and aim if possible to have an entire Welsh-speaking panel for posts where Welsh language is a requirement; there are specific panel arrangements in order of preference if a full Welsh-speaking panel is not available.

28. Welsh language skills are identified by HMCTS, the Judicial Office and the court or tribunal concerned; therefore we do not operate a prescriptive assessment method. We respond flexibly to requests to recruit candidates with Welsh language skills, creating bespoke assessments which will test and measure the language skills to the level they are required.
29. Where we recruit for a vacancy with a Welsh language requirement, we will clearly communicate any requirements identified by HMCTS, such as, for example, the ability to understand spoken Welsh, the ability to speak Welsh or the ability to read and write in Welsh.
30. Moreover we will explain the level to which Welsh language skills are required; for example, whether a Welsh-speaking post requires basic conversational skills, the ability to conduct a hearing in Welsh, or any intermediate level.
31. Where Welsh language ability is required for a vacancy, candidates will be assessed as to whether they meet a specific threshold in terms of language ability. This assessment will be conducted separately and in addition to the core assessment of all candidates against our published competency frameworks. We are developing a range of appropriate methods for assessing Welsh language requirements, to be used according to the circumstances and requirements of the particular exercise.
32. Where practicable, we will aim to offer candidates for positions based in Wales the opportunity to be interviewed in Wales.

Question 4. Do you agree with, or have any comments on, our provisions on the assessment of Welsh language ability?

5. Implementing and monitoring the Scheme

The following provisions numbered 33 – 38 in the Scheme comprise the ‘Implementing and monitoring’ section.

33. A copy of this scheme will be placed on the JAC website.
34. Our policies, initiatives and services will be consistent with this scheme, and we will fully consider any impact when developing new policies or procedures. This includes, in particular, the development and introduction of any new IT systems.
35. In policy development, we will use our existing impact assessment process to fully consider any potential impact to this scheme. In the unlikely event that a new policy could potentially impact upon delivery of the Scheme, our default position will be to consider alternatives and not undermine the Scheme.
36. We will provide the Welsh Language Commissioner’s Office with an annual monitoring report which will explain how this scheme was applied, and will include:
- the number of selection exercises conducted in Wales in which there was a Welsh language requirement as determined by HMCTS and the court or tribunal concerned;
 - the number of notices placed bilingually or in two language versions;
 - the number of judicial appointments made where Welsh language skills were required for a vacancy;
 - any complaints made and subsequent action taken against the JAC’s operation of this scheme;
 - where any standards were not met, with a full explanation and details of any remedial action taken.
37. We will make the report available to the Ministry of Justice under usual sponsorship reporting arrangements, and additionally to the Ministry of Justice’s Welsh Language Co-ordinator, HMCTS Wales and the Welsh Language Liaison Judge.
38. We will consult the Welsh Language Commissioner in advance if we wish to make any changes to the Scheme, and will not make any such changes without approval.

Question 5. Do you agree with, or have any comments on, our provisions on the implementation and monitoring of the scheme?

6. Complaints and suggestions for improvement

The following provisions comprise the 'Complaints and suggestions for improvement' section of the Scheme.

39. We hope that we will not give grounds for complaint, and will closely monitor recruitment exercises that have a Welsh language component to ensure full compliance with this Scheme.
40. If you do have a complaint about how we have met our commitments to this Scheme, or if you have any suggestions for the improvement of our Scheme that you would like us to consider, we ask that you contact us:
- Judicial Appointments Commission
1st Floor, Zone A
102 Petty France
London
SW1H 9AJ
complaints@jac.gsi.gov.uk
41. If you are not satisfied with our reply you may ultimately refer your complaint to the Welsh Language Commissioner's Office.
42. If the Welsh Commissioner's Office refer to us a complaint about the Scheme, which they have received directly, we will investigate the complaint and respond to you, and send the Welsh Language Commissioner a copy of the response.
43. Where the Welsh Language Commissioner's Office decides to investigate the complaint, the procedure will be such as the Commissioner considers appropriate to the circumstances of the case. This may result in the Commissioner allowing us to continue conducting the investigation and report on our findings; or if the Commissioner chooses to conduct the investigation we will co-operate fully.
44. Once the investigation is completed, in accordance with Section 19(1) of the Welsh Language Act, the Commissioner will send us a copy of the results.
45. None of the above provisions affect your ability to refer a complaint to the Judicial Appointments and Conduct Ombudsman.

Question 6. Do you agree with, or have any comments on, our complaints and suggestions for improvement provisions?

Question 7. Do you have any general comments on the Scheme or its introduction?

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1. Do you agree with, or have any comments on, our proposed standard of service?

Question 2. Do you agree with, or have any comments on, our advertising provisions?

Question 3. Do you agree with, or have any comments on, our provisions on other communications and material including general publications and selection exercise materials?

Question 4. Do you agree with, or have any comments on, our provisions on the assessment of Welsh language ability?

Question 5. Do you agree with, or have any comments on, our provisions on the implementation and monitoring of the scheme?

Question 6. Do you agree with, or have any comments on, our complaints and suggestions for improvement provisions?

Question 7. Do you have any general comments on the scheme or its introduction?

Question 8. Do you have any views on whether the proposals may have potential equalities impacts (race, sex, disability, sexual orientation, religion or belief, age, marriage, civil partnership, gender reassignment, pregnancy and maternity)? If so, please give reasons where possible to support your view.

The questions can be answered online, answered via email to us or a paper copy can be written and sent to us.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Email address (not mandatory)	
If you would like us to email receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Email address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

The Questionnaire can be completed online, or alternatively please send your response by 4 December 2015 to:

Operational Policy

Judicial Appointments Commission
1st Floor, Zone A
102 Petty France
London SW1H 9AJ

Tel: 020 3334 4187

Email: communications@jac.gsi.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Judicial Appointments Commission at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <https://consult.justice.gov.uk/>.

Alternative format versions of this publication can be requested on the above details.

Publication of response

A paper summarising the responses to this consultation will be published before March 2016. The response paper will be available on-line at <https://consult.justice.gov.uk/>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that

confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Judicial Appointments Commission.

The Judicial Appointments Commission will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

List of consultees

A copy of this consultation is being sent to the following:

Association of District Judges

Association of Law Teachers

Association of Women Judges

Bar Council

Bar Council Equality and Diversity Committee

CILEX

Council of Her Majesty's Circuit Judges

Government Legal Service

HM Courts and Tribunals Service

Judicial College

Judicial Office

Layers in Local Government

Law Society

Lord Chief Justice

Ministry of Justice

Society of Legal Scholars

Socio-Legal Studies Association

Solicitors Association of Higher Court Advocates

UK Association of part time judges

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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