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Quality of Welsh Legislation

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Total Words: 15010

DISSERTATION 2016

Quality of Welsh Legislation

LLM 2014-2016

**LLM in Advanced Legislative Studies (ALS)
UNIVERSITY OF LONDON
SCHOOL OF ADVANCED STUDY INSTITUTE OF
ADVANCED LEGAL STUDIES**

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ACKNOWLEDGEMENTS

First and foremost, I would like to express my sincere gratitude to Allah. You have given me the strength to believe in myself to achieve what has been ordained for me on account of your blessings. I could never have done this without the belief I have in you, the Almighty.

Secondly I would like to thank my thesis advisors, Dr. Helen Xanthaki and Dr. Constantin Stefanou who helped me in every step of the way. It's been a great pleasure having to know them and have them as my teachers. There is so much I have learned from them which has guided me during the entire period of my studies. I greatly appreciate and value their excellent advice and assistance.

I wish to extend my sincere thanks to my wife and my children for the love, care and extraordinary support. I would have not finished my studies without their encouragement and support.

DEDICATION

*To my lovely wife Saima Assad Burki
and my children
Izzah Burki, Muhaimin Burki and Zahra Burki
for all their support.*

DECLARATION

I do hereby declare that the work presented here is my own and that it has never been submitted to any other institute for any award whatsoever. CANDIDATE

Signed

Date

SUPERVISORS

Signed.....

DR HELEN XANTHAKI

DR CONSTANTIN STEFANOU

Dated

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CHAPTER ONE

INTRODUCTION

1.1 Overview

Wales's assignment of responsibility to legislate has been a slow but a steady process. Not so far ago after the Second World War in the early fifties, the first break through came when the junior government post of the Minister of State for Welsh Affairs was established. The matter of devolution had been more or less a roller coaster ride but in 1998 the UK Parliament passed the *Government of Wales Act 1998*¹. Under the Act there was no separation of powers and both the executive and the legislature acted as a collective body having a title of National Assembly. The Assembly was only able to prepare secondary legislation and that as well must be approved earlier by the UK Parliament.²

The separation of powers finally materialized after the *Government of Wales Act 2006*³ and the National Assembly was able to make laws in designated areas called '*Acts of the Assembly*'. The areas in which legislation could be prepared and drafted included agriculture, forestry, animals, plants and rural development, ancient monuments and historic building, culture, economic development, education and training, environment, fire and rescue services and fire safety, food, health and health services, highways and transport, housing, local government, National Assembly for Wales, public administration, social welfare, sport and recreation, taxation, tourism, town and country planning, water and flood defence and finally Welsh language. This is important because the process and quality of legislation is only limited to these areas. The other areas which include foreign affairs, defence, macro-economic policy, the tax and welfare system, energy policy, broadcasting and policing and justice are not open to legislation.⁴

The society reacts to legislation prepared by obeying it or disobeying and in the same way the legislation reacts to the society in an effective way or non effective way. When the law is effective, the society obeys it and when it is not effective then the society disobeys it by not displaying the expected results though exceptions are always there. The need for legislation in any state happens to result when it becomes the requirement of the society. If the quality of the legislation is good then it means that it is fulfilling the requirement of the society but if the quality of the legislation is not good then the requirement is still alive but not fulfilled. For that reason the society then adopts measures which are beyond the scope of law because the law applied had not shown promising results. In other words the society craves for legislation when it is required but the legislation has to be good quality which means it should fulfil the requirement by effective application. As a result the adoption of law depends upon the quality of legislation which then regulates the society.

¹ Government of Wales Act 1998 (on line) (cited on the 1st of February, 2016) available from the URL> <http://www.legislation.gov.uk/ukpga/1998/38/contents>

² Rawlings, R. (1998). New Model Wales, *The Journal of Law and Society* 25(4), 461-509.

³ Government of Wales Act 2006 (on line) (cited on the 1st of February, 2016) available from the URL> <http://www.legislation.gov.uk/ukpga/2006/32/schedule/7>

⁴ Lewis, G. (2007). Government of Wales Act 2006, *The Judicial Review* 12(3), 139-144.

The need for the Welsh National Assembly to be an autonomous institution is one step towards that direction of having qualitative and efficient legislation so that it can create primary legislation and also delegated legislation which is not only the requirement of the Welsh society but the legislature as well because the policy being developed which later forms the part of the legislative programme is better understood by the MPs.⁵ If the process of the policy is accurately adopted according to the requirement of the society then the legislation produced would not only be fulfilling the requirement but the quality of such legislation will be effective for the purpose for which the policy was introduced at the first place. Another approach in understanding the need for quality of legislation is through the political party manifesto. The political party manifesto is based upon the issues which matter to the masses and are of utmost importance in the legislative programme. Once the Cabinet approves of the policy the matter is handed over to the ministry to further formulate and develop it and transfer the policy in the shape of drafting instructions to the legislative drafter. In Common law countries the role of the drafter is quite important as it comes in aid to the formulation of the policy and as well as in the preparation of the drafting instructions. The development of the policy is not the task or the position of the drafter but the experience and skills of the drafter supports the development. This is due to the fact that the drafter is well aware of the hurdles which could topple the policy and as a result can alert the incoming dangers to the policy both in the policy making and legislative process. Not that only but the drafter supports to overcome the barriers as well as the complications. This is important because this method and practice supports the policy and legislative process which in turn produces quality legislation. The end result is that the legislation serves the masses thus fulfilling the electoral mandate which could boost up the count of the voter with a longing desire of the government to win another term.⁶

The Office of the Legislative Counsel (OLC) drafts legislation in Wales. The quality of legislation like any other drafting office is a crucial aspect of the legislative drafting. For that reason the legislative counsel works carefully with the legal staff in the *Welsh Government's Legal Services Department* and with the *Office of the Counsel General* along with the policy representatives. This is important because the purpose of this joint venture is to make sure that the draft legislation precisely indicates the objective of the legislators without any lacunae for contradictory outcomes. The Legislative Counsel is responsible for the consistency and clarity of the legislative draft. The legislative drafting is quite a difficult task because the clarity and consistency of the legislative draft is not limited to English language only but the task is also carried on when translating or enacting it into the Welsh language. The Office of the Legislative Counsel (OLC) differentiates that which legislation is mutual between England and Wales and which is exclusively for the Welsh jurisdiction being enacted by the National Assembly of Wales.⁷

⁵ Winston Roddick (1999-2000) *Devolution-The United Kingdom and The New Wales*, 23 *Suffolk Transnat'l L. Rev.* 477 1999-2000

⁶ Ann Sherlock (2006) *Human Rights in Post Devolution Wales: For Wales, See Wales*, 57 *N. Ir. Legal Q.* 138 2006

⁷ Office of the Legislative Counsel (OLC) (on line) (cited on the 1st of February, 2016) available from the URL > <http://law.gov.wales/constitution-government/government-in-wales/welsh-gov/welsh-gov-civ-serv/welsh-gov-lawyers/olc/?lang=en#/constitution-government/government-in-wales/welsh-gov/welsh-gov-civ-serv/welsh-gov-lawyers/olc/?tab=overview&lang=en>

The legislative drafters in the OLC work around the principle and doctrine adopted by the OLC in the quality of legislative drafting that the draft should offer clarity, intelligibility in order to refrain wrongful application, inconsistency and instructing impracticality. The guideline provided by the Office of the Legislative Counsel to promote the case of quality drafting clearly states that,

“Legislation must be effective, but it cannot be effective unless it is sufficiently clear. An effective draft is certain in its effect, accurate and achieves the policy objectives behind the legislation. Being clear is about making it as easy as possible for readers to understand what is being said. Even if a draft is clear enough to be effective, it may still be possible to make it easier to understand. The drafter’s search for clarity should go beyond the minimum required to be effective.”⁸

The task of the drafter in the construction of a legislative draft in English as well as in Welsh no doubt poses a great challenge but the Government of Wales is quite clear in expressing that the legislative text in both languages is ‘for all purposes to be of equal standing’⁹ hence both are equally authoritative. But clarity, intelligibility and simplicity in legislative drafting in Wales are a big challenge for the drafter when the drafter needs to point out particular features in different terminology. As every word represents a meaning therefore the drafter in order to overcome it has to become more knowledgeable of the linguistic feature in order to attempt efficiently the linguistic precision. Otherwise the issues of efficiency and effectiveness become difficult and problematic because of the need to translate all legislation into Welsh.¹⁰

The system of legislative drafting is centralized which means that the Office of the Legislative Counsel (OLC) executes all the legislative drafting. The office consists of a team of lawyers who specialise in legislative drafting. The office is headed by the First Legislative Counsel and a Director by the Welsh Government. The legislative drafters of both Welsh and English languages are expert in legislative drafting and its techniques and are bilingual but not in the strictest sense of the language itself therefore the legislative drafters are assisted by the ‘Linguistic Support Services’. The reason for the support is to make sure that the drafters are in aid of every little help which could bring a qualitative draft. The legislative draft is prepared by the team of drafters, one in English and the other one in Welsh which is actually translation of English text prepared first and then translated to Welsh. This is important because in this way the drafter can examine both drafts on the same piece of instruction received. The drafters labour carefully and jointly so that the drafts prepared are consistent to each other. Though one of the drafter leads the team but the meetings with departmental instructing officers on account of the legislative proposal and the organising of the legislative scheme is all done jointly.¹¹

⁸ Office of the Legislative Counsel, Legislative Drafting Guidelines (January 2012) Part 2 para 5 (on line) (cited on the 15th of February, 2016) available from the URL <<http://www.senedd.assembly.wales/documents/s18905/January%202012%20-%20Legislative%20Drafting%20Guidelines%20report%20by%20the%20Office%20of%20the%20Legislative%20Counsel.pdf>>

⁹ Guilia Adriana Pennisi (2016) Legislative Drafting and Language: Legal Language in Context Statute Law Rev (2016) 37 (2): 97-100

¹⁰ Victoria Jenkins (2005) Environmental Law in Wales, J Environmental Law (2005) 17 (2): 207-227

¹¹ Lionel A. Levert (2004) Bilingual and Bijural Legislative Drafting: To Be or Not To Be? Statute Law Rev (2004) 25 (2): 151-164

It is quite understandable that the audience of Welsh language has decreased over the last decade but the importance of Welsh as a language has increased. The introduction of Welsh as a second language in school has had quite an effect on the ratio of people understanding Welsh in fact there are schools which take Welsh as the only medium of teaching. But on the other hand the increasing number of immigrants assimilating in Welsh society has had a retrospective effect. Not that only but the number of Welsh speaking people opting out of Wales are also contributory to the decreasing number of the Welsh speaking population.¹² The official application from road signs to the enactment of legislation is all in the official language of Welsh as well as in English. The significance of Welsh language both as a part of culture and the need of the Welsh speaking population has led the enactment of the legislation in Welsh but on the other hand in English for those who are native to Wales but are not Welsh speaking. All these efforts on the duality of legislation by the Welsh government are for the promotion of Welsh language and for the convenience of the public in the English language.¹³

In the efforts to achieve quality of legislative drafting the development of Welsh legal terminology as compared to the English legal terminology which has been developed over the past decades is in infancy. The National Assembly enactments after the *Government of Wales Act 2006* have been critically examined by critics on account of the legal terminology used by the legislative drafters both in English as well as in Welsh. In Wales the audience of the legislation are of three kinds. First kind consists of members of legislature definitely who has had the chance to examine the legislation first hand but may or may not agree to legislation being enacted. The second kind deals with people who are well aware of the legislation being brought and want to have a suitable understanding of it but most important of all is the third kind which is public at large and which shall be affected by the legislation mostly. A study to the account of the development of legal terminology conducted by the Aberystwyth University has successfully related the matter of Welsh language terminology,

“For example, the term ‘custody’ is still commonly, though incorrectly, used in relation to the residence of children. However, the development of terminology in Welsh for this concept meant that different words could be used for “the imprisonment of a person suspected of or charged with a criminal offence” on the one hand, and “an order regarding who a child should reside with” on the other”¹⁴

In other words the quality of legislation becomes more stringent when the drafter has to choose among the suitability of words explaining the legal terminology. The Welsh Language Commissioner has stressed the need of new concept to be developed in order to utilise different terminology. The Welsh Language Commissioner emphasised,

¹² Jones, Hywel, M (2012) *A Statistical Overview of the Welsh Language*, Cardiff. Welsh Language Board.

¹³ Welsh Language (Wales) Measure 2011, s 1.

¹⁴ C F Huws (2013) “The day the Supreme Court was unable to Interpret Statutes” (2013) 34(3) *Statute Law Review* 221.

“The new legislation of Wales is in itself developing new concepts in both languages. Consider in that respect what is now meant by the terms ”safonau” and ”standards” in relation to the Welsh language or “llesiant” and “well-being”. These terms have definite concepts relating to them which result from the definitions of Welsh legislation. One of the main international principles of standardising terms is the need for terms to reflect a concept. One of the purposes of legislation is to implement a policy aim and thus it is vital to establish that policy concept from the outset and to specify terms in Welsh and in English to reflect that concept.”¹⁵

For that reason the quality of legislation can only be achieved when the legal terminology is studied at the time of policy making and legislative drafting. All those legal terms which become a problem are to be standardised. The process of such standardisation should be such that all the three audience bring all the problematic term to one forum which could then standardised the legal terminology accepted. As the Welsh Government has the responsibility to develop legislation and policy in Wales therefore the Office of the Parliamentary Counsel and Welsh Government working with the terminologist should come to a standardised account which would not jeopardize the quality of the legislation,

“These terminologists should advise the policy and legislation developers as they standardise terms at the beginning of the process of developing policy and legislation bilingually.”¹⁶

The quality of legislation during the devolution process in terms of efficiency, efficacy and effectiveness is greatly affected by the quantity of legislation which has resulted in its inaccessibility. This is because in Wales, the statute book is growing as the National Assembly is becoming more autonomous and able to cover more areas. The case of *Thoburn v Sunderland City*¹⁷ it is quite clear on the subject of jumble of laws. This is important because the devolution has led the mishmash of the primary as well as of the secondary legislation and the audience of the legislation is unable to identify the rights and obligations in required conditions. The process of legislation has continued before devolution and after devolution. The Parliament of UK is making law for Wales which include primary legislation as well as delegated legislation. The amendment process has continued in the National Assembly for Wales as well as the UK Parliament. The policies behind the legislation keep on changing sometimes in both the countries of England and Wales and sometimes only in any one of them. As a result there might be change of law in one of the country and not the other. One fair example would the Social Services and Well-Being Act (Wales) Act repeals Part 3 of the Children Act in Wales but such change is not adopted in England. As a result the devolution has led to the uncertainty of the rights and obligations.

¹⁵ The Welsh Language Commissioner’s proposal for “terminologists” is described in paras 10.24 to 10.26.

¹⁶ The Welsh Language Commissioner (on line) (cited on the 5th of July, 2016) available from the URL > <http://www.comisiynyddygyraeg.cymru/English/News/Pages/Call-for-a-%E2%80%98rigorously-Welsh-way%E2%80%99-of-legislating-in-2014.aspx>

¹⁷ *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151.

1.2 HYPOTHESIS:

My hypothesis is that the process of *devolution* has affected the quality of legislation. I will prove that devolution process has affected the quality of Welsh legislation on account of the *inadequate Welsh legal terminology* available to make the drafting of Welsh consistent with English drafting and on its own with the policy.

I will further prove that devolution process affected quality of Welsh legislation on account of inaccessibility of Welsh legislation.

In short I am trying to *prove* that *quality of legislation* in the *process of devolution* has been **effected** by,

- 1) In effective Legal Terminology of Welsh language
- 2) In accessibility of legislation due to amendment, cross reference and inter related provisions.

1.3 METHODOLOGY

In order to prove my hypothesis, I will demonstrate how the Thornton's first stage of drafting process i.e. understanding the proposal brings effectiveness in the implementation of the legislation. The aim is to show that the development of the legal terminology should be part and parcel to the development of the policy and abandoning it will ruin the quality of legislation in Wales. The understanding of the proposal and policy gives the legislative drafter the insight of the legal terminology to be adapted to draft and translate the policy successfully. I will also show that how devolution has obstructed the accessibility of legislation. I will demonstrate with examples that the plethora of legislation after devolution has made the legislation inaccessible to its audience.

1.4 STRUCTURE

The series of chapter written brings the methodology in action in order to prove the hypothesis. The first chapter is concerned with the introduction which comprises of an overview of the devolution in Wales and how it has affected the quality of legislation i.e. legal terminology and inaccessibility. The second chapter provides us an explanation of Thornton's first stage of drafting and its relation with legal terminology for effective legislation. The third chapter attempts to show the need for the development of Welsh legal terminology and its standardisation for effective quality of legislation. The fourth chapter deals with inaccessibility of legislation inherited after devolution. The final chapter which concludes the business shall deliver that the quality of Welsh legislation has been affected by devolution in Wales. The drafting is concluded in English and transferred to Welsh draft. The quality of legislation can be achieved if inaccessibility of legislation and the inadequacy of legal terminology of Welsh language can be defeated.

CHAPTER TWO

POLICY BUILDING AND BILINGUAL LEGISLATION

2.1 UNDERSTANDING THE POLICY PROPOSAL

In the groundwork and development of the legislative draft, the policy purpose is based upon the different phases in order to develop the policy. Initially assessing the current state and acknowledging the problem to reform. For that reason diagnosing ways to reform and opting a method in order to enforce the solution. In all these phases the involvement of the legislative drafter is of utmost importance. In other words the office of the legislative drafter is not only a drafting office but at the time of the initiation or development of a policy the legislative drafter can question the hypothesis which inhibits the policy itself. The process of drafting and the policy process are aligned when things are being drafted and it starts to bring out the meaning what the policy is trying to achieve. It does not stop there but it also turn out the weaknesses and point out what has been left out as well. But equally important is the language and terminology which is being used to quote scheme and design to make that legislation, being crafted into solving the problems pointed out by the proposal based upon the policy. The legislative drafter position is not to make the policy but his experience and skills come in aid to develop the policy. For that reason the quality of legislation during the policy building process can be improved by the involvement of the legislative drafter as he can clearly identify that the drafting instruction are in accord with the policy itself. Not that only but also the legislative draft is clear, concise and understandable and the legal terminology adapt to the proper understanding of the policy.

According to the Thornton's first stage of the drafting process which demands to understand the proposal is based upon the instructions developed during the policy process.¹⁸ The policy process coordinating with the drafting process has special significance in the terms of legal terminology. The Welsh legislation has an issue of not having enough legal terminology therefore the need to standardise the Welsh legal terminology is of great concern. In fact the gravity of the problem can be understood by the fact that while devising the policy and legislative drafting, the matter of legal terminology should be determined as well. This is important because if the matter is not concluded at this stage then the objective of the policy shall remain undelivered thus making the policy ineffective. In other words if legislative policy is satisfied then effective legislation is achieved but if we fail to attain the objective of the policy then the legislation fails as well. In the case of Welsh legislation the policy and all the policy discussions are in English therefore expecting policy essence to be in the Welsh draft is not possible.¹⁹

¹⁸ GC Thornton (1996) *Legislative Drafting* (4th edition Butterworth, London 1996) 50

¹⁹ Peter Ziegler (1988) 'Information collection techniques for the Evaluation of the legislative process' (1988) *Statute Law Review* 160

The drop back scene of the Welsh legislation is to draft in two set of languages as a result of devolution and not being able to exercise the policy objective can be understood by the legislative drafter if the end objective i.e. effective implementation is not achieved due to non effective legal terminology. The efforts of the Office of the Parliamentary Counsel, the Legal Services Department, the Office of Counsel General and the jurilinguists are all appreciable to this aspect of filling the space made by the lack of legal terminology but the reality is that not until standardisation process is adopted for the Welsh legal terminology there shall be always lacunae in quality of legislation. The Welsh Government is required to use the process of bilingual drafting of legislation by the legislative drafters constructing legislation in Welsh and in English after receiving policy directions and drafting instructions established from the policy makers.

Thornton has emphasized the drafter should consult the policy maker because it leads to a better understanding of the policy proposal. Better understanding would enable the drafter to visualize what lacks in the Welsh language on account of legal terminology to back up the policy in the draft.²⁰ The Welsh draft after it has been translated by the translation services comes back to the legislative drafter. The drafter at that stage tries to bring sense into Welsh draft but only if constructive comments and suggestions for alternative solutions had been worked out during the policy process. This is important because it means that if the translation services were unable to bring the Welsh legislative draft equivalent to the English draft and it was not consistent with the policy objectives due to inadequate legal terminology than finding a way around it would be easier if such a scenario had already been discussed at the policy discussions. If the policy is complex or it has more than one objective then the constructive discussion would benefit in the clarification of the complexity of the policy. It is quite simple that complex policy will result in complex legislation which does not get easily digested by its audience. This will also lead in the utility of complex term in English as well as in Welsh. As a result the drafter should get involved at the earliest to clarify the policy because if the objective of the policy is not absorbed in the bill than there is really no point to it.²¹

The normal requirement of the drafter is to be well trained but his inability in Welsh draft to correctly translate the policy in exact, legal and well-constructed sentences undermines his expertise and skills. As a result during the process of policy development, the legislative drafter working for the Office of the Legislative Counsel clarifies what would at the drafting stage prove to be a hurdle in expressing the policy.²²

²⁰ M. Ng (2010) 'Legislative Drafting: A Lawmaker's Perspective', The Loophole-CALC, No. 3, December 2010, p. 78

²¹ T. Perera, 'The Wavering Line Between Policy Development and Legislative Drafting', The Loophole-CALC, No. 3, August 2011, p. 65.

²² C. Stefanou (2008) 'Drafters, Drafting and the Policy Process', in C. Stefanou & H. Xanthaki (Eds.), *Drafting Legislation: A Modern Approach*, Ashgate, Aldershot, 2008, p. 322.

2.2 LEGISLATIVE DRAFTING IN RELATION TO POLICY

The role of the legislative drafter is not limited to the transforming of the government policy into legislation but it also contributes to the policy as well. The role of the drafter is not stagnant when the policy is initiated in fact it speeds up as the policy is being formulated. By the time of legislative process, the drafter is fully involved in transmitting the policy into the draft which brings it to the pinnacle of the policy i.e. being effectively implemented. But on the other hand the policy of the government suffers when the policy is not being transformed in the form of legislation because the legislative drafter was unable to convey the precise meaning of the policy due to the lack of legal terminology available at hand. In other words legislation can only be effective if it is considerably clear. This is important because it is accurate and achieves policy objectives and not that only but it is also understandable and easier to read for its audience as well. In the case of Wales, Welsh Government is the client of the drafter and if the drafter cannot successfully transform the objective of the Welsh Government policy into a legislative draft then the draft is not clear and not precise to the government policy. The drafter is the translator of the client's desire and on account of these desires furnishes the draft with the legal terminology²³ as it is expected of him. There are critics who do not agree with the fact that the drafter responsibility is not to the legality of the policy but the responsibility is limited to the transfer of the policy into legislation

The legislative form is designed by the drafter by the utilisation of the legal terms to produce the effect as required by the policy. If the effect is not produced by the legislative form on account of the policy then either the drafter is responsible for not using the legal terminology required or the language lack the legal terminology to give the desired effect of the policy. This is important because in both the cases the result would be inadequate legislative draft which shall affect quality of legislation.²⁴ The policy of the government is like setting up a dining table with the entire legal cutlery available. This includes legal terminology, numbering, paragraphing and all the technical details which could make the clarity and understanding as the fore front runners in passing the desired effect of the policy.²⁵

The legislative drafter job requires him to find persuasive solutions to the problems. The problem which is faced in Welsh language drafting is that the government has a clear policy to an issue but due to the lack of legal terminology, the drafter finds it a quite a challenge to translate the policy into Welsh legislation thus making it not very effective in Welsh legislation whereas the same policy is quite in balance in English legislative draft and its effect. In other words there is lack of consistency in Welsh and English legislation on the same policy due to the construction of the legislative draft.

²³ Deborah MacNair (2003) "Legislative Drafters: A Discussion of Ethical Standards from a Canadian Perspective", *Statute Law Rev* (2003) 24 (2): 125, p. 145.

²⁴ Roger Purdy (1988) "Professional Responsibility for Legislative Drafters: Suggested Guidelines and Discussion of Ethics and Role Problems", 11 *Seton Hall Legis. J.* 67 1987 – 1988, p. 80.

²⁵ Geoffrey Bowman (2005) "Why is there a Parliamentary Counsel Office?", 2005 *Statute Law Review* 26 (2), 69-81, p. 73,

The other aspect is that that it also wastes time in order to make necessary amendment. The English draft does not consume time because it has the legal vocabulary to support its policy and does not require unnecessary amendments.

2.3 Prioritisation of Legal Terminology during Policy Making

A complex policy which results in slipshod manner will create faulty legislation. Therefore for an effective policy a legislative plan will be devised after a lengthy process of cooperation between the collaborators which play their role in the policy process. In order to have effective policy and effective legislation, the need for prioritisation of legislation in Wales is necessary. The prioritisation in Welsh legislation is concerned with the effective use of Welsh legal terminology so that the legislative drafting can become effective in its actual sense of a draft and not translation. The prioritisation process varies from country to country and it is also dependant upon the entity prioritising it. The role could be played by Welsh Government through the Office of the Parliamentary Counsel or by the Cabinet as well. The best authority in this aspect is the OLC as the office is concerned with utility of the legal terminology and its work is most affected on account of it. The key point in developing any policy is that it should not be haphazard and involvement of the drafter at this point will alleviate the pressure on the policy on any unseen obstacles to encounter. For that reason the drafter involvement in this process will determine the utility of the legal terminology as it shall become an obstacle if it is not dealt at this very stage. The drafter at this stage has got three principles of drafting which is efficacy, efficiency and effectiveness and not dealing the Welsh legal terminology can react to the policy and draft in respect of these principles. Prioritising concept could be new to the Welsh legislative and policy process but it is quite necessary especially for the effectiveness of legislation.²⁶

The idea of prioritising legal terminology at this stage when the policy is being developed might result in the argument that prioritisation is better left for the social problems. But it must be understood that any social problem which the legislation is going to address shall be in the nature of legislation and the Welsh legal terminology is one of the tool kit to constitute such legislation. As a result if the government took a stance of being complacent to this affect then the likelihood is that the legislation will end up probably being translated and not properly drafted. This is important as it a known fact that translation is not originality and if the draft is not original to the essence of the policy than there is every chance of ambiguity slithering into it. The drafting office must adjust their priorities when addressing the drafting of the legislation at any stage when it becomes evident that the terminology shall be the burden of ineffectiveness.

²⁶ Kamugundu, O.B (2013) Prioritisation Legislation in the Policy Process. Commonwealth Law Bulletin, Vol 39, 2013, Issue 3.

2.4 EFFICACY, EFFECIENCY AND EFFECTIVENESS

The term efficacy denotes the height of any policy in achieving the desired result and the drafter's ability to generate the result being pursued.²⁷ When looking at the quality of drafting, efficacy is the climax with effectiveness following behind.²⁸ In other words efficacy is the zenith of legislative drafting and efficiency is the minimum cost for achieving this legislative pursuit.²⁹ The drafting of Welsh legislation and English legislation both at the same time though is a big accomplishment but hardly recognized. This is because this accomplishment has resulted in achieving more disadvantages such as any legislation enacted is double in size due to the duality of legislation in English and Welsh. This aspect of dual legislation then requires additional cost for keeping the legislation correct and similar to each other as well to the policy. The policy on the other hand keeps on changing and resultantly amendments keep coming up. For that reason the cost of efficiency is high as it is but it also does not produces the desire result as anticipated in the policy therefore the efficacy is down the drain. There is no better explanation of the implementation of efficacy and the rule of law that the audience of the legislation must appreciate that it is in their benefit and move within the capacity of that law and most importantly what that law is.³⁰

The legislative drafter work is challenging as it is but having to draft both the legislation is a Herculean task. The first draft is drafted in English and then translated to Welsh for the Welsh speakers and sometimes it could be the other way around. This is important because translation from one draft to the other leads to discrepancies as it is but it also needs extra time to perfect, edit to make sure if the legal effect is the same. As a result when producing large bills there is likelihood of the content going astray to the policy objective and resultantly not producing the desired result even after the spending costs have doubled. The only way the problem can be overcome is by a legislative drafter who is proficient in both Welsh and English language. In this way the legislative drafter can bring out the desired effects of the policy objective and with consistency between the languages but the existence of such a drafter is only possible when there is a system developed with a bilingual workforce who is well proficient in both Welsh as well as in English. This workforce should also be working in connection with the policy initiation, policy formulation so to understand the root of the desired expected effect. In this way both the languages will have the opportunity to alter the policy if any hurdle or danger is alerted by the legislative drafter. In any piece of legislation enacted the desire is to have effectively implemented to achieve the required result and this shall indicate the quality of legislation. If the desired effect was great then the effectiveness was great hence great

²⁷ L. Mader 2001) 'Evaluating the Effects: A Contribution to the Quality of Legislation' (2001) 22 Stat LR 119.

²⁸ Helen Xanthaki, 'On Transferability of Legislative Solutions: The Functionality Test' in Constantin Stefanou and Helen Xanthaki (eds), *Drafting Legislation: A Modern Approach* (Ashgate, Aldershot 2008)

²⁹ R Poser (2000) "Costs Benefit Analysis: Definition, Justification, and Comments on Conference papers" (2000) 29 *Journal of Legal Studies*, 1153-1177

³⁰ *Merkur Island Shipping Co. v Laughton* [1983] 1 ALL E.R. 334; *Blackpool Corporation v Locker* [1948]1 All ER 85, 87

piece of legislation.³¹In other words achieving the regulatory goals of the policy makers and that is why the need of the drafter at the time of developing and formulating the policy the drafter needs to bring into the notice of the policy makers any issue which relates with the Welsh Legal Terminology. In this way the desired regulatory goals can be achieved in Welsh version as well.³² If the draft version and the translated version is not in conformity with the policy or cannot deliver the policy which governs it then there is a definite chance that it shall germinate ambiguity in its interpretation and sow the seeds of uncertainty in its application.³³ The matter to be comprehended is that the two versions are equally sound meaning thereby that both of them deliver in every sense of the policy, the determining factor but when any discrepancy leads to undelivered policy in one and delivered policy in the other then the scale of quality as well as the effectiveness tilts the balance and gives priority of the one over the other. That is why in any matter before a court if both the pieces of legislation in different languages state the same sense, intention and policy, there is nothing before the court to interpret.³⁴ But in case of inconsistency the courts will try to devour the piece of legislation to its own interpretation which it deems fit to that context.³⁵

The quality of legislation is directly related to the effectiveness and efficiency meaning thereby that if the legislation turns out to be effective in its policy purpose and does not require too many resources then it is cost effective as well.³⁶ In other words,

“the important step in the drafting process is the preparation of the legislative scheme. Upon that scheme hangs the quality of the bill. The legislative scheme represents counsel’s mental picture of how well the Act of parliament would look in structure and quality, in substance and in form...”³⁷

Not that only but the effectiveness deals with the reality consequence and effect of legislation being implemented. The reaction of the public in receiving the legislation and more importantly if the legislation was received at all. For that reason it is easy to determine that the quality of legislation identifies if it shall be well received or not received at all.³⁸ If it is well received then it means that the mechanism with which the government wanted to achieve desired result has been successful and if it is not well received then it means that the instrument was not well thought off before it matured into a statutory instrument.³⁹ It seems that the judiciary has taken a stand to the aspect of defining ‘communication of the legislation’. In other words if the drafter has

³¹ H. Xanthaki (2011) ‘Foreword: Special Issue on Legislative Drafting’ (2011) 37 *Commw L Bull* 391

³² R. M. Beauprē (1986) *Interpreting Bilingual Legislation* (2nd edn, Toronto: Carswell 1986).

³³ D. Greenberg (2008) *Craies on Legislation* (9th edn, London Sweet and Maxwell 2008).

³⁴ C. F. Huws (2012) ‘Is Meaning Plain and Ordinary? Are You Sure About That?’ *Stat Law Rev*, Vol 33 Issue 2, 230-251.

³⁵ S. Krongold (1992) ‘Writing Laws: Making Them Easier to Understand’ (1992) 24 *Ottawa L Rev* 495

³⁶ William. Dale (1977) *Legislative Drafting A New Approach*, (Butterworth 1977) 340.

³⁷ V.C.R.A.C Crabbe (1993) *Legislative Drafting* (Cavendish Publishing Limited 1993) 2.

³⁸ V.Vanterpool (2007) ‘Critical look at Achieving Quality in Legislation’ (2007) 9*EURJ.L Reform*, 167

³⁹ L.Mader (2012) ‘Evaluating the Effects: A Contribution to the Quality of Legislation’, (2001) 22(2) *Statute Law Review*, 119-131

fulfilled the requirement of a qualitative draft and transferred the policy through the legislative scheme, the likelihood chance is that it shall get conveyed to its audience. If the quality of the legislation has been not effective than it means the piece of legislation has not been communicated which then raises the chance of second opinion on the quote that 'ignorance of law is not an excuse' because if it has not been communicated at the first place then its expected compliance is more of a fools paradise.⁴⁰ The dependence of the effectiveness with the relationship of consistency in both the draft is necessary. For that reason if the draft in English is consistent with the policy but not the Welsh draft due to inconsistencies created through inefficiency and inadequacy of the Welsh legal terminology then it unfair to the Welsh speaking people to be forced to read the English version as the medium and means of communication is there but nothing gets communicated due to the language barrier of the Welsh speaking people.⁴¹

⁴⁰ Daniel Greenberg (2008) *Carries on Legislation* (Sweet & Maxwell, 2008) 373.

⁴¹ J. Beatson (2006) 'Common Law, Statute Law and Constitutional Law' (2006) 27 Stat LR 1.

CHAPTER THREE

BILINGUAL DRAFTING

3.1 DRAFTING IN WALES

In order to understand the Welsh aspect of drafting then the account of past colonial states gives best example of bilingual drafting practices. If we take into account British colonies such as Canada or Hong Kong, the legislation is found to be bilingual, the official language and the local language which might not have the official status but still relatively important that the legislation is required in that local text. More over the system of law makes the difference as well. If it is Common law practice then it is quite hard to see a French language legislation but not in Civil law. The drafting of Canada requires the draft in English as well in French and for that reason the system of co-drafting is adopted. In the method of co-drafting both the drafter are equipped with the knowledge of English as well as French. Both the drafters are briefed by the departments on the instructions and what the policy intends to achieve and work on *one document*. But on the other hand another method which is commonly known as '*The New Brunswick Method*' deals with two drafters who prepare the draft in each of their respective language. The drafter which led the team prepares the draft first and the second drafter will only commence to make the other draft after he has commented on the first one. Most of the communication is done in English.⁴²

The legislative drafting in Wales is somewhat mixture of both drafting method. The Welsh legislative drafting is based upon certain factors which rule over the drafting process. The first factor which is to be encountered is the time for the policy development and for the drafting of detailed, precise and within reach legislation in two languages. Secondly, the knowledge of the expertise and other members of the team including the legislative drafter and finally the system set in stone so that there is quality assurance control. As the Office of the Parliamentary Counsel is still in its infancy therefore there will be always issues of time as the staffs consists of three members only. There is sometime help available on the basis of case from the consultant legislative drafter. The Office of the Legislative Counsel drafts for the Welsh Government. The Office of the Parliamentary Counsel (OPC) of England comes in aid whenever it is required but the construction of the drafts is mainly constituted by the OLC staff.⁴³

In the drafting process in Wales the introductory draft is prepared in one language and then it is translated into the other. There is good chance of having the first draft in English but maybe not in every case because it could be the other way around as well. When the introductory draft is in English then the Welsh language draft is constructed after the finalisation of the English text document. This is important because among

⁴² Levert, LA (2004) Bilingual or Bijural Legislative Drafting: To Be Or Not To Be? Statute Law Review (2004) 25(2), 151-164.

⁴³ Bush Keith (2004) New Approaches to UK Legislative Drafting: The Welsh Perspective, Statute Law Review (2004) 25 (2): 144-150.

other reason firstly it cures the *linguistic quality* of Welsh by the amendment of the English draft and secondly because if something points out that the English draft needs to revise, the same could be done as well. This factor might be true in most of the cases but it could be the other way around as well. This means that if a mistake is done in drafting in English then it might not get corrected while having the Welsh one being translated and the same mistake can get repeated in the Welsh one again.⁴⁴ In the same way if one draft has been drafted poorly then the result with the other draft which is not even being drafted but translated might inherit the same defect as those of the original one.⁴⁵ In reality both the drafts of English as well as of Welsh are equivalent to each other but this does not at all mean that both are equally treated in the preparation of the legislative draft. It is a common knowledge to anyone who is related to the field of drafting that the time is of the essence and translation from the original draft requires time and further time it is required when it is being adapted and adjusted to the original version in English. The translation comes at the end stage therefore with very little time in hand as most of the time is well spent on the original draft. The sacrifice has to be made on some account which usually occurs with the uniformity. The problem occurring in the legislative drafting along with other issues is the absence or more appropriately the standardisation of the legal terminology in Welsh Language. It is due to this reason the drafters will raise such matters at any stage of the drafting with expertise on language. The matter which has been a hanging fire in the Welsh legislative drafting is the case when the English draft is prepared and the policy objective is achieved but when it gets translated to Welsh draft, the very essence of the policy might get lost on the way as a result of the absence of legal terminology which has been overcome by the English language due to its development over the centuries of legislative practice. The matter of Welsh legal terminology is difficult task as it is but the English legal expressions translation into the Welsh language is there as well. As a result the Welsh language struggles in trying to balance English legal expression due to its archaisms as well as adopting its own legal terminology to express its own sense into the Welsh version of the draft. The level of high consistency among the two languages cannot be achieved because the Welsh one does not support the archaism of English legal expression with equivalent expressions. In other words the matter of both the draft being equivalent seems to be a bit far fetched because policy development, drafting instructions, communication with the members of the relevant department and finally drafting is all in English and after it has been finalised, it is translated to Welsh language legislation.

The two examples of the '*co-drafting*' as well as of the '*New Brunswick Method*' teach us something which stands for certainty and clarity where as the ambiguity in the Welsh legislative text due to the absence of legal terminology cause discrepancies which result in a huge burden on the resources. For that reason if plain language is applied in the standardisation of Welsh legal terminology and between Welsh and

⁴⁴ W. Voermans 2009) 'Concern about the Quality of EU Legislation: What Kind of Problem, By What Kind of Standards?' (2009) 2 Erasmus LR 59, 64

⁴⁵ M-C. Guay(2007) 'The Yin and the Yang of Drafting in Two Languages: From Finesse to Faux Pas' The Loophole 7

English language as well, there is better chance of achieving clarity and quality of legislation.⁴⁶ The idea of co-drafting is not practical because in case of French and English versions of legislative draft, the French version has very well developed glossary of legal words to counter its needs equivalent to English legal terminology. This results as a balance between the two legislative drafts.⁴⁷

The Office of the Legislative Counsel (OLC) is very protective on account of the way it handles the legislative drafting in both languages. The OLC has rejected the idea of co-drafting and reiterated on the fact that in order to keep both the legislative text equivalent in Welsh and English languages normally English text is produced first and then translated to Welsh. The question of legal terminology is explained and discussed in order to curb the inconsistency arising out of the text. The draft after being translated into Welsh brings the drafter into discussion on the inconsistency due to legal terminology and return back to the table to create a homogenous legislative text in which both are equivalent. The reservations of the OLC have on the matter of co-drafting mainly deals with the fact that it can be adopted on certain legislation if not all. The method which deals with co-drafting is inapplicable when dealing with large bills because it not only takes a long time before it is drafted but it devours more resources whereas in the method already in progress, the reliance on the translators is more dependable, quicker and with less burden on the resources. The consistency in both languages is towards the disadvantage end especially when Welsh language is being chiselled into an English form notably when the arrangement of the English and Welsh differs.⁴⁸ For that reason what ever method is adopted, the primary essential is to adjust and adapt in order to communicate the same message otherwise the legal effect not only will lose the certainty but consistency with each other as well.⁴⁹

The issue of Welsh legal terminology needs to be worked out in the present method being utilised by the OLC and even in the method of co-drafting if adopted which is highly unlikely. The development of the legal glossary or the standardisation as it is called will cut down the dependability on the translation services. The translation services can translate an instrument but the reliance on the translation service to convey the intended effectiveness of the policy is quite doubtful. It is therefore appropriate that the standardisation of the Welsh legal glossary is done either by the Welsh Government or by the OLC and the same is applied by the legislative drafter with his knowledge, experience and skills to translate the policy into legislation. The connection between the language and its people though is very intricate but very related⁵⁰ as well therefore the Welsh Government while enacting Welsh legislation

⁴⁶ Making Laws in Wales (2015) National Assembly for Wales, Constitutional and Legislative Affairs Committee (on line) (cited on the 5th of May, 2016) available from the URL <<http://www.assembly.wales/laid%20documents/cr-ld10379/cr-ld10379-e.pdf>

⁴⁷ Bush Keith (2004) New Approaches to UK Legislative Drafting: The Welsh Perspective, Statute Law Review (2004) 25 (2): 144-150.

⁴⁸ K. Bush (2004) 'New Approaches to UK Legislative Drafting: The Welsh Perspective' (2004) 25 Stat LR 144.

⁴⁹ M. Thomas (1988) 'The Development of a Bilingual Legal System in Hong Kong' (1988) 18 Hong Kong LJ 15.

⁵⁰ S. Lortie and R. C. Bergeron QC (2007) 'Legislative Drafting and Language in Canada' (2007) 28 Stat LR 83

must take into this account that the Government is obligated to Welsh speaking people to draft legislation which is in Welsh⁵¹ and consistently of high quality.

Welsh legislative drafting has been strongly commented by the Welsh Language Commissioner, an independent body established by the *Welsh Language (Wales) Measure 2011*⁵² to assist the progress of Welsh language by suggesting that the legislative drafting developing the text bilingually and at the same time can advance verbalization and the objective of the policy in legislation. The Language Commissioner indicated that the design of verbalization in English and Welsh are not identical as it is quite apparently clear from the definition of *clarity* provided by the Office of the Legislative Counsel in Drafting Legislation Guidelines.⁵³ In fact this can be a chance to develop '*legal Welsh*'. But the Welsh Government has other ideas and it seems that it does not support the theory of co-drafting. It seems that the government policy is not clear to the matter of legal terminology because unlike the Welsh Government, the Counsel General has conceded with idea of the Welsh Language Commissioner stating that,

“... the process of consideration and thinking in the two separate languages as part of the drafting process helps to tease out meaning in a way that would not happen if you were simply using a single language.”⁵⁴

The Welsh Government believes that with all the disadvantages on account of absence of standardisation of legal terminology in Welsh legal language, requirement of standardisation of English and Welsh language and other factors which qualify in the list of ruining the quality of legislation, the present system works fine. The reluctance of the Welsh Government in not adopting a co-drafting idea or any other idea which fits to the present situation is possibly due to the reason that legislative development of the Welsh language in its legal terminology or '*legal Welsh*' as it is commonly known is in its infancy as compared to the French and English languages. The establishment of the Wales National Assembly has sown the seeds of the legislation in Wales. There is likelihood that standardisation of the Welsh legal terminology and that with the English language will bring out effective results once the jurists, lawyers, judges, linguists etc work together on the standardisation process to churn out what is required out of the Welsh language.⁵⁵

⁵¹ W. Dale (1984) 'Review Article: Canadian Draftsman ship, and the French Connection' (1984) 5 Stat LR 62, 65.

⁵² Welsh Language (Wales) Measure 2011 (on line) (cited on the 5th of May, 2016) available from the URL ><http://www.legislation.gov.uk/mwa/2011/1/contents/enacted>

⁵³ Office of the Legislative Counsel, Drafting Guidelines (on line) (cited on the 3rd of May, 2016) available from the URL >

<http://www.senedd.assembly.wales/documents/s18905/January%202012%20-%20Legislative%20Drafting%20Guidelines%20report%20by%20the%20Office%20of%20the%20Legislative%20Counsel.pdf>

⁵⁴ CLA Committee, RoP paragraph [43], 17 November 2014

⁵⁵ Peter Leyland (2011) The multifaceted constitutional dynamics of U.K. devolution, 9 Int'l J. Const. L. 251 2011

3.2 STANDARDISATION OF LEGAL TERMINOLOGY

Office of the Legislative Counsel's 'Drafting Legislation Guidelines' in part 2 regarding clarity of the legislation states the following,

“Clear bi-lingual text It is usually the case that the English language text of legislation is produced before the Welsh language text. This means that the initial Welsh text will be produced by the government's legislative translators before being checked for legal equivalence with the final text in English. It is important that the Welsh text should not unnaturally follow the syntax of the English, and neither should the English unnaturally follow the Welsh syntax. The texts have equal standing in law and the focus in checking legal equivalence between them should be on whether the same legal effect is achieved. Every effort should be made to ensure that this is done through natural and modern language in both versions.”⁵⁶

This is important because the guideline has cleared the concept that English and Welsh are not on the same footings. The first step in establishing Welsh language as the source of contemporary legal communication has been achieved since the process of legislative draft began in Wales. The second step in that direction is the developing of legal terminology which prepares Welsh language to be used as legal language as English has been used over the past millennium.⁵⁷

In order to get an idea of the standardization of legal terminology the case of Canada is quite exemplary to this account. The standardisation process in Canada was organised by a Committee which was funded by the Federal Government: Promoting Access to Justice in Both Official Languages (PAJLO) and supported by the National Programme for the Administration of Justice. The Committee determines which legal terms are to be utilised and once approved become effective to be used in legislation. The work has been assisted by academic institutions which are able to understand the importance and skills for that matter.⁵⁸ The Welsh Government has other strategies on their mind. One of such strategy is the *BydTermCymru* website which publicizes Welsh / English terminology and is maintained by the Welsh Government translation services. If this strategy is shared by another strategy developed by different Welsh collages such as *eiriadur Prifysgol Cymru, y Porth Termau Cenedlaethol* and the *Coleg Cymraeg Cenedlaethol* which define legal terminology of Welsh language in their own databases then there shall be consistency when the entire database is shared together without any hinges attach to it.

⁵⁶ Office of the Legislative Counsel, Drafting Guidelines (on line) (cited on the 3rd of May, 2016) available from the URL><http://www.senedd.assembly.wales/documents/s18905/January%202012%20-%20Legislative%20Drafting%20Guidelines%20report%20by%20the%20Office%20of%20the%20Legislative%20Counsel.pdf>

⁵⁷ D Hughes and H G Davies (2012) “Accessible Bilingual Legislation for Wales / Deddfwriaeth Hygyrch a Dwyieithog i Gymru” (2012) 33(2) Statute Law Review 103 at 106.

⁵⁸ François Blais, Language Update, Volume 6, Number 4, 2009, p 14, (on line) (cited on the 3rd of May, 2016) available from the URL>http://www.btb.termiumplus.gc.ca/tpv2guides/guides/favart/indexeng.html?lang=eng&lettr=indx_autr8G8LU1W84qNM&page=9LdxzmQigKuk.html

The most plausible solution has been given is by the Welsh Language Commissioner who believes that Welsh legal terminology issue can be encountered as and when they arise. For that reason whenever an issue of the Welsh legal terminology pops up, it should be referred to one single location with a brief context to it. In this project all the audience of the legislation should participate so that the glossary can be developed slowly but steadily. As the data starts to pile up, the terminologist must examine the issues and consult with the legal experts, advocates, judges and all those which can shed some light on such issues. There are two way of organising the process of the standardisation of legal terminology. The first way is through the Welsh Government because Welsh Government has the responsibility to develop policy and legislation in Wales and being part of government can finance and maintain the project. But then there are those who believe that the best office to perform this task is the Office of the Legislative Counsel as the office is responsible of drafting legislation and all the effort is for to improve the quality of legislation therefore best person for the job is the Legislative Counsel. It is true that the Legislative Counsel draft the legislation but it is also true that Welsh Government is responsible for policy developing and legislation and having the means of financing the project therefore the best forum would be the Welsh Government for the development and standardisation of the Welsh Legal Terminology through the establishment of a sovereign committee which should deal with problems in relation to the Welsh Legal Terminology.

The use of plain language in the legislative text of English and Welsh has been identified as another way of applying less legal terminology if not getting rid of it. But applying plain language does not mean that simplification of language so that they are clearly readable in fact any compromise on precision and intelligibility would be devastating. In other words discarding precision and effectiveness in return of simplification and clarity would mean to surrender the intended effect of the legislation. As a result it is in the interest of the quality of the legislative draft that from the very beginning of the construction of the bill on a particular subject the legal terminology of Welsh as well as English is selected so that the bill on later stage does not consume the resources on account of expertise in linguistics and unnecessary amendments.⁵⁹ It seems that the right authority presumably is the Welsh Government which can make standardisation not only successful but accessible as well.⁶⁰

A good administration of the ideas and belief noticeable by legal terms and concluded by developing terminological understanding and utilising the terminological tools to bring a clear response in Welsh legislation means a good quality of legislation.⁶¹ If we use inadequate legal terminology to express the policy essence then the terminology used in inaccurate or incorrect way results disrupting the professional

⁵⁹ Constitutional and Legislative Affairs Committee Inquiry into Making Laws in the Fourth Assembly ML13 - Welsh Government (on line) (cited on the 3rd of May, 2016) available from the URL ><http://www.senedd.assembly.wales/documents/s29604/ML%2013%20-%20Welsh%20Government.pdf>

⁶⁰ Maurizio Gotti (2016) Linguistic Features of Legal Texts: Translation Issues, *Statute Law Review*, 2016, Vol. 37, No. 2, 144–155

⁶¹ D. Mellinkoff (1963) *The Language of the Law* (Little, Brown & Co., Toronto 1963),

communication and legal certainty.⁶² The purpose of the Welsh legal terminology in legislative drafting is to satisfy a clear and unambiguous policy and a way for inducing an effect of law. The Welsh translation of the English draft has issue of quality and efficiency. And due to the inadequacy of legal terms it could deliver poor quality of legislation. The legal terminology of Welsh language development is concluded in its own environment where it is fairly understood in its framework. The difference between the English and Welsh culture of law is clear from the legislative terms. This is important as it means the legislative term used by the drafter for the English draft is according to English culture of law and respectively expresses that sense of legal culture in drafting the bill by translating the policy. On the other hand Welsh legal culture has its own strong beliefs which cannot be expressed by English legal culture legislative terms therefore the need to develop Welsh terminology is even greater than ever. As a result the devolution has resulted in the translation of English draft into the Welsh one but the same cannot justify the quality of legislation needed for the Welsh draft. The Welsh draft translated not necessarily translates the source of the translation because even a ‘way’ of translation could take you away from the essence of the policy or it also could bring you to the understanding of the policy. For that reason Welsh translation of the legislative draft is a double edge sword which could go both ways depending upon your understanding.⁶³

The need for the standardisation of legal terminology can be better understood by the usage of the term ‘*abuse of rights*’. This is important because before the Second World War the term was more noticeably used in private law meaning an ‘intercourse’ but as the legal culture developed on account of world wide treaties happening, the term ended up as in the wider sense of definition in Public International law. The term now is used in the sense of ‘*where law must not be used to allow causing intentional harm*’. As a result the private law has been superseded by the Public International law. Drafting the legislation in one language and translating it to the other generates contradictions and obscurities. The translation process might unconsciously produce distortions. In drafting Welsh legislation, the draftsman of the English draft will have concept familiar to English legal culture and such concepts are well hidden from the translator. On the other hand the translator might add up something without any intention to do it through an expression or a phrase. The truth is that what is not plain in English might be plain in Welsh or vice versa. For that reason if a mistranslation slithers into Welsh translation of the English draft and the matter to some context has to be adjudged by a Welsh judge than there is every consequence of the mistake in its interpretation.⁶⁴

The Welsh legal terminology is associated with culture due to its history, politics and on account of its sociological aspects. For that reason having an English text translated into Welsh gives its legal equivalence but does not bring out the essence of Welsh legal culture. In other words,

⁶² Constantin Stefanou, ‘Is Legislative Drafting a Form of Communication’, *Commonwealth Law Bulletin*, Volume 37, Issue No. 3, 2011.

⁶³ Tímea Drinóczi and Barnabás Novák (2015) *Linguistic Approach in Legisprudence-Terminology, Translation Studies and Databases, The Theory And Practice Of Legislation* Vol. 3 , Iss. 1,2015

⁶⁴ Gutteridge, H.C (1937-1938) *The Comparative Aspects of Legal Terminology*, 12 *Tul. L. Rev.* 401 1937-1938

“To translate into English technical words used by lawyers in France, in Spain, or in Germany is in many cases an impossible task, and conversely there are no words in the languages of the continent to express the most elementary notions of English law. The words common law and equity are the best examples thereof; we have to keep the English words [...] because no words in French or in any other language are adequate to convey the meaning of these words, clearly linked as they are to the specific history of English law alone.”⁶⁵

In the same way the Welsh legal terminology is linked with its own socio-political history. The legal terminology being standardised will explicitly prove the relevance of the term in relation to the history and the same can then be put to use in relation to some subject where it is required to bring out the essence of the provision and policy being utilised. To illustrate for this purpose the word ‘*legislation*’ is taken as an example. The word ‘*legislation*’ has two meanings. Firstly it means “*The act or process of making laws; enactment*”⁶⁶ and secondly it means “*The laws so made*”⁶⁷. The Welsh word in response to first meaning is “*deddfu*” and to the response of second meaning is “*deddfwriaeth*”. In Welsh there is not one word for the meaning of ‘*legislation*’ but two different words which denote two different meanings of ‘*legislation*’. As a result when the drafter receives the text of Welsh draft after it is being translated by the translation services into Welsh, the drafter’s response then is to confirm whether the words used in Welsh translation confirm the meaning of the English text or not. Due to the lack of legal glossary the level of Welsh draft is usually compromised to this account which affects the quality of legislation.

The dearth of Welsh legal terminology requires prompt action from the Welsh Government. It is in the interest of justice both to the drafter and to the audience of the legislation to develop a glossary of Welsh legal terminology so that the drafter is relieved from the burden of the linguistic problem being faced since devolution began. The Welsh system of legislation is like any Common law system and it does not mean that having a Welsh draft in another legal system. In the matter of speaking English legal culture and Welsh legal culture only represents the mind set of the drafter when approaching legislation unlike the legal duality in legislation in Canada.⁶⁸

The Welsh legal terminology act as the means to implement legislation and such means should be readily available. This is important as it brings us to preparedness and development of the legal terminology in Welsh language. If we illustrate legislation as an act war of words putting the policy or ideas into practical solution of social grievances then the war cannot be won without the preparedness of its tools. For that reason the development and compilation of the Welsh legal terminology is a precondition and essential to conduct a legislative draft in Welsh.

⁶⁵ R David (1980) *English Law and French Law* (Stevens London 1980).

⁶⁶ Collins English Dictionary (on line) (cited on the 5th of May, 2016) available from the URL <<http://www.collinsdictionary.com/dictionary/english/legislation>

⁶⁷ Ibid

⁶⁸ Gaudreault, Maria-Claude (2006) *Canadian Legislative Bilingualism: An Expression of Legal Duality*, *Commonwealth Law Bulletin* Vol. 32, No. 2, 205-219, June 2006

CHAPTER FOUR

LABYRINTH OF INTERCONNECTED LEGISLATION

4.1 Devolution

The word *Devolution* according to the *Kilbrandon Report*⁶⁹ means “the delegation of central government powers without the relinquishment of sovereignty”.⁷⁰ The *Government of Wales 2006 Act* deals with the legislative strength of the National Assembly and ‘does not affect the power of the Parliament of the United Kingdom to make laws for Wales’.⁷¹ The Welsh process of ‘Devolution’ has given the authority to make new and amend legislation to the Wales National Assembly but on the other hand has emerged with a capacity to make the legislation inaccessible as well. The devolution process in Wales has led the law to become too complicated. There are different factors which contribute to these circumstances. The first factor deals with the fact that during the process of devolution in Wales, the legislation in Wales has bargained with the legislation which is not devolving. This is important because it simply means the legislation in Wales partly constitute of what Wales National Assembly has achieved on a particular subject with the combination of What has been taken out as it applies in the area which is not devolving. This fact is confusing and the audience of the legislation does not appreciate it because of its impracticality. In the devolution process the user is not clear in which state, what sort of obligation and rights are to be exercised. The situation brings compound legislation through interconnectivity among different laws on the same subject.⁷²

The second factor has two sides of the coin. The first side deals with the legislation which stands applicable to Wales and had earlier applied to Wales and England. Likewise the legal provisions in the legislation also stood out for England and Wales. The practice of separating the provisions from the New and Old Wales is not an easy task. In this task a joint and sincere undertaking is required to have it purposely concluded. On the other side of the coin when this separation had occurred to the bills only applicable to England, the legislative text has resulted in England and Wales legal text in place only for Wales.⁷³

The third factor which has contributed to inaccessibility of legislation in the devolution process is the system of granting the powers by the Parliament of England. The tricky part is what is in the front, is not actually there such as Secretary of the State is actually Secretary of State in England because in Wales the power was

⁶⁹ Kilbrandon Report (on line) (cited on the 3rd of May, 2016) available from the URL><http://www.gov.scot/Publications/2003/10/18259/26879>

⁷⁰ Cmnd 5460 I Report of the Royal Commission on the Constitution, 1969-1973 9; Royal Commission on the Constitution 1969 – 73, vol 1, Report (Cm. 5460), para. 543

⁷¹ S 107(5), Government of Wales Act 2006.

⁷² The Law Commission, Form and Accessibility of the Law Applicable in Wales, (on line) (cited on the 3rd of May, 2016) available from the URL>http://www.lawcom.gov.uk/wp-content/uploads/2016/06/lc366_form_accessibility_wales_English.pdf

⁷³ Ibid

controlled by the National Assembly for Wales which later on was transferred to the Welsh ministers.⁷⁴ One such example is in the case of the Wildlife and Countryside Act 1982. In this Act under section 45 empowers of Countryside Commission along with the Secretary of the State to amend certain order but the reality is far away from it. The real power lies with Natural Resources Wales and the Welsh Ministers as the Countryside Commission has become defunct.

The quality of legislation on account of the factors mentioned above has not only made the legislation complex and complicated but also inaccessible. The best solution is to cut down the amending legislation which applies to England and Wales or United Kingdom. All the legislation which requires such amendments can just presume that it applies to Wales only. The other aspect which is quite important is the conversion or more accurately the translation of the English version of laws into the Welsh version. The factor to be considered here again is that the translation process which requires the language to be equipped with the Welsh legal terminology so that the precision and effectiveness in English version is not lost in the Welsh one.

The *Government of Wales 2006 Act* has given the National Assembly its legislative competence in the devolved areas to make primary legislation. The question which is now evolving is that if it makes primary law to a devolved area then it must have a jurisdiction to apply that law. If the jurisdiction extent is Wales then it should mean that Wales has a jurisdiction in its own right because two different legislatures cannot work parallel in the same jurisdiction. The system of the English courts will be foreign in Wales and it would rank English court judgement as foreign judgements and vice versa.⁷⁵ In one of the instances dealt by the Welsh Affairs Committee, the matter of *The Powers of the Children's Commissioner for Wales* was reprimanded that the Children's Commissioner for England in Government's Children Bill did not had enough power and freedom for the one created in Wales as a result of devolution of the respective area. The Committee shed fear on the prospective relationship with the Welsh counterpart and recommended more authority to be given to the Welsh counterpart by further devolvement to that respect otherwise both English Children Commissioner and Welsh Children Commissioner would carry the limited responsibility for the protection of interest of children in Wales. The argument to this context resulted that England based Commissioner should deal with the children related issue in non devolved areas and did not accepted that any child in Welsh children home should come under the capacity of the Welsh Commissioner even if it came from the social services from England.⁷⁶

In order to understand the whole picture of Welsh legislation and why it is in such a big mess of having the need for it being cross referenced, interrelated and needing amendment resulting its accessibility sometimes impossible because the UK legislation as a whole is too big in volume. United Kingdom has got four distinct

⁷⁴ Ibid

⁷⁵ House of Lords Select Committee on the Constitution, 15th Report of Session 2003 – 04, Devolution: Its Effect on the Practice of Legislation at Westminster, para. 17

⁷⁶ The Powers of the Children's Commissioner for Wales (on line) (cited on the 3rd of May, 2016) available from the URL ><http://www.publications.parliament.uk/pa/cm200304/cmselect/cmwelaf/538/538.pdf>

legislatures which are pouring out volumes of primary legislation. The volume of the statute book is ever so increasing and there is no count to it. From a birds eye view there are 250,000 pieces of legislation available and imagine your way if the requirement is to finding one.⁷⁷ Devolution has affected the accessibility of law which is of paramount nature when considering the quality of the legislation. This concept is common in Wales, UK and European Union as well as in the jurisdiction of European Court of Human Rights.⁷⁸ The reason for being the focal point is that every person is subject to law and its requirement therefore any act of the Parliament or of the Wales National Assembly once enacted becomes law whether it is published or not therefore the accessibility of such legislation imposes an obligation on the government that every person is able to access it by a matter of standard.⁷⁹ It seems that ignorance of the law is not an excuse but at present it is an excuse when the devolution process had hindered the quality of law being effective and accessible to its audience. In other words starting from the efficacy and trying to reaching the concept of effectiveness is not possible if it is inaccessible. The Office of the Legislative Counsel working along the Office of the Parliamentary Counsel has admitted to the fact that law is too complex in their report.⁸⁰ The accessibility matter can well be understood from the utility of the website www.legislation.gov.uk which clearly explains the needs of its audience accessibility as it has been visited by over 2 million visitors. The audience need to understand their right and obligations in any situation they are encountered but the problem lies with the maze of legislation which has been created. The devolution process among other factors primarily was to cut down the issues of inaccessibility of legislation as faced in UK as a whole but the stark reality is that the devolution has led more problems of accessibility. In this way the policy upon which the draftsman translate the draft and the Welsh National Assembly enacts it in the devolved areas has lost the primary factor of effectiveness as the accessibility issues keep piling up.

The devolution of legislative power to Wales has given birth to the access problems in Wales. The undertaking for developing legislation and controlling the framework of legislation seems to have started to decline before it even reached its pinnacle. The legal framework such as the National Assembly and the Welsh Government are on top of the matter to handle the situation but due to shortfall of favourable outcome lack of success in making law and policy clearer and intelligible is making the situation from bad to worse. It appears that the attempt to consolidate and integrate rules has resulted in contradicting them. In order to correct what went wrong in the past the utility of retrospective legislation has been utilized to correct the past. This has resulted in uncertainty of laws or in fact no rules to laws at all because the rules that are mostly being employed sometimes are practically impossible. This has led to the Welsh Government frequently adopting and changing of the policy thus changing rules along with them. But the reality is that wherever and whatever legal system is examined, none will suffice to be perfect and the Welsh one is like the same. The

⁷⁷ J Sheridan, "Using data to understand how the statute book works" (2014) 14(4) Legal Information Management 244-248

⁷⁸ R (on the application of Salih) v Secretary of State for the Home Department [2003] EWHC 2273

⁷⁹ T Bingham (2010) The Rule of Law (2010).

⁸⁰ When Law Becomes Too Complex (2013) (on line) (cited on the 5th of May, 2016) available from the URL > <https://www.gov.uk/government/publications/when-laws-become-too-complex>

Welsh legal system is having the issue of accessibility of law which is also common in England. Both England and Wales share common feature of legal and political framework. But in the case of Wales there is an additional matter of devolution of UK Parliament legislative power.⁸¹

4.2 Requirement of Accessibility in Quality of Legislation

According to Bennion,

“It is strange that free societies should thus arrive at a situation where their members are governed from cradle to grave by texts they cannot comprehend.”⁸²

As it is a common understanding that the legislation purpose is to govern the people but also it gives the ability to people to understand their obligation and most importantly their rights.⁸³ In this process of legislation the most important factor is the effectiveness of the legislation which is the cornerstone of the quality of legislation. This is important because until the legislation is digested by its audience the concept of compliance and effectiveness remains incomplete thus results in the failure of the legislation.⁸⁴

In other words the effectiveness descends upon the quality of legislation⁸⁵ after it has been drafted and enacted, in fact after all the policy and legislative process has been completed and introduced to its audience. The last stage determines the future of the legislation and what had been the policy process and legislative process weaknesses and success.⁸⁶ The Welsh Government and National Assembly Wales as a part of making the legislation accessible has to commit in consolidating and codifying the legislation if the purpose of the legislation is to be understood and made effective. This will act as not the final frontier to the legislation but maybe a final frontier to the quality of legislation for the Welsh Government as it is in the process of devolving. In order to consolidate and codify so as to make the effectiveness as the quality of legislation, the Welsh Government is committed to convert the *blank canvass* of legislation into efficient and effective Welsh legislation. But the commitment of the Welsh Government is dependant on how the devolution proceeds as the National Assembly has to act now on the powers already retained by it to increase the effectiveness in the existing legislation or the new one which is in the process of being enacted.

⁸¹ Dylan Hughes & Huw G. Davies (2012) Accessible bilingual legislation for Wales (*Deddfwriaeth hygyrch a dwyieithog i Gymru*) Statute Law Review 33(2), 103–121

⁸² Francis Bennion (1983) *Writing Laws: Making them Easier to Understand* (2nd edition, Oyez Longman, London 1983) 8

⁸³ V.C.R.A.C Crabbe (1993) *Legislative Drafting* (Cavendish Publishing Limited 1993) 2.

⁸⁴ Michele M Asprey (2003) *Plain Language for Lawyers* (3rd edition, The Federation Press 2003) 8

⁸⁵ Maria Mousmouti, ‘Effectiveness as an Aid to Legislative Drafting’, (2014)2The Loophole CALC, 15.

⁸⁶ Helen. Xanthaki & Duncan Berry (2011) *A Visionary of Training Legislative Drafting*, The Loophole CALC, 18

The Rule of Law is quite clear and it applies in the same way every where whether it is Wales or it may the Parliament of England,

“The law must be accessible and so far as possible intelligible, clear and predictable.”⁸⁷

This is important because the need of accessibility is due to the fact that public cannot afford advocate, lawyers or other related professionals as their services cost, more or less that does not matter but it cost which is additional to our daily expenditure as it is already dear to make both ends meet. As a result if the laws are better drafted and better organised, the level of understanding resulting in its efficient application can be increased.⁸⁸ According to Thornton,

“the purpose of legislation are most likely to be expressed and communicated successfully by the drafter who is ardently concerned to write clearly and to be intelligible...in other words to communicate successfully, requires the unremitting pursuit of clarity by drafters”.⁸⁹

This means that if the Acts of the Parliament are not clear to put into use because of their obscurity, technicality and complexity than the matter of accessibility being inaccessible is quite clear. And if the application of law is not effective meaning it is not accessible than,

“legislation which is difficult to understand is derogation from the democratic right of a citizen to know what law he is governed”⁹⁰

In order to ensure accessibility of legislation tenderfoots’ lawmakers are coming across difficulties but self governance of Wales has a price to pay and way to learn. The accessibility of legislation inherited and being developed is dependant upon the certain factors. The first factor deals the access to the legislation which is up to date so that you know your exact rights and obligations. For that purpose there is an online database [http:// www.legislation.gov.uk](http://www.legislation.gov.uk) which is produced by the National Archives. This online database gives you the access which is free to the latest version of the legislation but the problem is that though it is being maintain by capable hand, it is still developing therefore there is every possibility that the online database will not be able to show latest updated version. The updated version which has been published cost and unlike on line data base are not free. For that reason anybody in dire need of the latest version gets the best of the publisher regarding legislation if they are willing to pay for it. In the same context Westlaw, LexisNexis Butterworth Direct and Hein online provide an up to date version of the likely demand as long as it is being paid. If you are looking at getting the latest version of legislation on Wales, it does not matter where you. All that matters is that you pay for it whether you are

⁸⁷ T Bingham (2010) *The Rule of Law* (2010).

⁸⁸ The Rt Hon The Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales, *The role of the judiciary in a rapidly changing Wales*, Legal Wales Conference (11 October 2013)

⁸⁹ Helen Xanthaki (2013) *Thornton’s Legislative Drafting* (5th edition Bloomsbury Professional 2013) 55.

⁹⁰ GC Thornton (1996) *Legislative Drafting* (4th edn Butterworths, London 1996) 50

living in Wales or England. But it seems that the irony does not end here because if you want to get a copy of the latest version of the Welsh legislation then first you pay, secondly the Welsh legislation is quite difficult to read especially after the promulgation of section 156(1) of the Government of Wales Act 2006 that you have to buy the English version as well. The need for the English and Welsh version is due to the fact that though the audience has got the access to it but for the sake of the legislation being communicated, needs the help of someone who could translate the meaning of the text after corresponding both bilingual texts. This additional help shall probably cost you more burdens. As a result when the two texts have corresponded to a point, it will lead you the answer required. In the coming years maybe with additional resources there might be a chance of having a Welsh version of legislation available on the National Archives to correspond with the English version.

The second factor deals with the complexity of the legislation. The complexity of the legislation further deals with the legislation at the time of devolution and as it carried on subsequently. The factor of inaccessibility discussed earlier is in direct relationship with this one. This is because the complexity has arisen due to the weakness of the legislative text on account of insufficient legal terminology and as a result of amendments. The easiest reply to it seems to have consolidation and codification of legislation but actually it takes unprecedented courage and years of effort to conclude it.

The third factor which relates to the accessibility of the legislation is the explanatory material. In other words when ever a difficult account is reached in England legislation, there is a series of books available to choose from. Unfortunately the Welsh legislation is under the dilemma of having very little material available to this account. As a result if a person who has got hold of both version of the text required from a free public services and needs to sort out the matter on his own then the effort is quite encouraging but not very fruitful. Like in order to get a nail in the wall you need the tools for it, in the same way explanatory material helps the reader or the audience as a tool for explaining what both text mean but such tools are very scare and even when they are available they require updating as well. A recent initiative by the UK Parliament in order to accommodate Welsh law audience is to have a better view of the legislation prepared by the UK Parliament is Wales-only. In Wales-only the UK Parliament enacts the Acts related to Wales only and leaves the delegated legislation to be the responsibility of the Wales National Assembly. The couple of important examples are Human Transplantation (Wales) Act 2013 and Welsh Language Act 1993.

4.3 Examples of the Inaccessibility in Welsh Legislation

Education Legislation in Wales

In order to examine that how ‘devolution’ has affected the accessibility, the sector of ‘education’ can be examined as an example of inaccessibility affecting the quality of Welsh legislation. The Wales National Assembly at the moment has enacted 13 pieces of primary legislation of education on account of the new devolution power under the Government of Wales Act 2006. The devolution process has not however restricted the Parliament to develop and passing the legislation which somewhat also is related to Wales as well due to the legislative consent motion thus resulting ‘education law in Wales’ becoming incorporated between 17 to 40 Acts of the Parliament and six Acts of the National Assembly and hundred of legal instruments. This has resulted in an alarming situation for its audience. For the audience the inter connectivity in the Acts of the Parliament of sections and subsections applicable only in Wales or applicable only in England are all branching out. If we simply consider a matter of ‘higher education’, the issue is spread out in different statutes which partly apply to England and partly to Wales. When taking cognizance of the matter fully we see that it is quite hard to describe non-textual amendments and which part of legislation applies only to Wales.⁹¹ The matter of inspection of education and training in Wales is somewhat significantly spread out in different parts of legislation. On examining it was brought into notice that the inspection diverse style of education and training in Wales, the provision in relation to it are in eight different Acts passed by the Parliament. There are overall 31 parts of legislation which end up dealing with education law.⁹²

Social Services and Well-being Wales Act 2014 & the Children Act 1989

The *Social Services and Well-being Wales Act 2014*⁹³ deals with social care services. The inaccessibility is due to the fact that the part of *The Children Act 1989*⁹⁴ which relates to the provision of care and support to the children and their respective families mentioned in Part 3 of the Act 1989. As a result of devolution they do not apply to Wales anymore but still apply to the Children Act 1989 in England. More confusing is that other than the part which deals with the social services of the children, the remaining part shall still carry on applying in Wales because it dealt with

⁹¹ Form and Accessibility of Law Applicable in Wales (on line) (cited on the 5th of May, 2016) available from the URL> http://www.lawcom.gov.uk/wp-content/uploads/2016/06/lc366_form_accessibility_wales_English.pdf

⁹² Ibid.

⁹³ Social Services and Well-being Wales Act 2014 (on line) (cited on the 5th of May, 2016) available from the URL>http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf

⁹⁴ The Children Act 1989 (on line) (cited on the 5th of May, 2016) available from the URL><http://www.legislation.gov.uk/ukpga/1989/41/contents>

the public law proceeding in the Children Act 1989. It seems that the Children Act 1998 is totally disarrayed its provisions all over the place. The Children Act 1989 if codified shall contain part of the provision which apply to England only and not Wales but on the other hand Wales National Assembly does not have the competence to codify or consolidate the Act 1989. On referring back to the account of legal terminology the matter of social care used the terminology of ‘well being’ and not the term as being used in England which is ‘welfare’.

In the same way the provisions which are in relation to the services function of the local authority under the *Local Authority Social Services Act 1970*⁹⁵ will no longer apply to Wales as the Part 8 of the *Social Services and Wellbeing Act 2014* incorporate social services functions as well. The applicability of the provisions related to the services function of the local authority shall carry on in England.

Local Government Legislation: Local Government Act 1972 & Local Government Act 2000

The Local Government Act 1972⁹⁶ has been updated since it has been enacted therefore any reference to its terms means looking into deep before a requisite provision of amended version is found. As the style and form has been a constant change in legislative drafting therefore the language of the aforesaid act seems to be quite out of style or primitive. The arrangement of the provision has been such that the amendments have left no sense at all. The Local Government Act 1972, Part 1 deals with the local government areas and authorities in England and Part 2 deals with the local government areas and authorities in Wales. On the other hand Local Government Act 2000⁹⁷ deals with England and Wales as well.

The case of accessibility to have quality legislation is to integrate and consolidate both the act. As a whole it is partly related to Wales and partly related to England and finally the part which stays in common but the problem is that which provisions shall form the part of Wales and which provision shall form part of England and lastly which provisions are in common.

Town and Country Planning: Town and Country Planning Act 1990, Planning Act 2008 & Planning (Wales) Act 2015

The Planning Directorate in Wales is sponsoring and advancing noticeable development system in Wales. The construction and enactment of the Planning (Wales) Act 2015 is one step towards that direction. The planning law shared both by

⁹⁵ Local Authority Social Services Act 1970 (on line) (cited on the 5th of May, 2016) available from the URL><http://www.legislation.gov.uk/ukpga/1970/42/contents>

⁹⁶ The Local Government Act 1972 (on line) (cited on the 5th of May, 2016) available from the URL>http://www.legislation.gov.uk/ukpga/1972/70/pdfs/ukpga_19720070_en.pdf

⁹⁷ Local Government Act 2000 (on line) (cited on the 5th of May, 2016) available from the URL>http://www.legislation.gov.uk/ukpga/2000/22/pdfs/ukpga_20000022_en.pdf

Wales and England was lastly consolidated in 1990 through the Town and Country Planning Act 1990 along with the Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning (Hazardous Substances) Act 1990. The need at the time was the same as it is at present i.e. fragmentation of law. After the consolidation the effects of the clarity did not last long as six act of the Parliament and four of the Assembly were passed. The present Panning (Wales) Act 2015 has been achieved after the devolution by amending the Town and Planning Act 1990 and at present if you do not have a amended up to date text then finding a provision is a lost purpose especially whether it to Wales or England.

Legislation in Relation to Waste and Environment

The European Union Directives deal mostly with the legislation related to waste and environment. The directives are transpose into the national legislation and taken as the rules and regulation. The Welsh Government work with the Department for Environment, Food and Rural Affairs of England as most of the EU directives are common. As the waste industry is a common feature in both the countries so is the legislation which is dispersed in the nature of three Acts of the Parliament along with statutory instrumentation covered under the directives of the European Union and European Communities Act 1972. The directives of the EU are not easily transposed into the national law especially when the process of devolution is in progress. This means sharing the resources of policy understanding with England and transposing he EU directive which keep on changing with the environmental policy changing constantly.

Wales Measure (2011)

The Wales Measure (2011) is a piece of legislation which has resulted after devolution. The purpose of the statutory instrument was to modernise the legal framework of the Welsh Language Act 1993 and improving the conduct of the Welsh language in public services. But the devolution has not actually help this aspect of quality in fact the style and form of the Act is totally not accessible hence damaging the quality of the legislative enactment. In the case if someone has to appeal before the Welsh Language Tribunal then it is quite an effort locating the grounds which could stand in appeal in the different sections which are not constituted in a sequence to the matter of appeal.

Deregulation Act & Housing Act 1988

The Acts require amendments to keep them up to date therefore the Housing Act 1988 as a result of deregulation was amended but the irony in the situation is that the section 61 of the Housing Act 1998 which necessitated the word 'in relation to Wales' to be inserted was left out. As a result the powers which were to devolve Welsh ministers remained with the Secretary of the State.

CHAPTER FIVE

CONCLUSION

From the above discussion we can conclude that the need for drafting of legislation has resulted due to the devolution in Wales. There are two set of drafts prepared for each piece of legislation and the requirement to converts the inherited part of legislation to be converted in Welsh one as well. There are similarities as well as differences in legal culture which signify different legal system. The legal terminology used in English drafts in the construction of Welsh legislation represents the meaning and objective of the English legal culture. The Welsh drafts on the other hand have got a major issue of inadequacy of legal terminology. The policy process and legislative process is all exercised in English. The Welsh legal culture needs to develop its own set of legal terminology so that the Welsh drafts which are actually not constructed but in fact translated from the English draft version to the Welsh one can express their legal system significance by adopting standardised legal terminology and are able to express the policy objective in the Welsh terminology to bring out the exact intention of the policy meant for Wales. The legal terminology differs from country to country and differs a lot when the countries speak two different languages. In the case of translating, an appropriate understanding of the legal system and an in depth analysis in comparative law⁹⁸ is the requirement before translating English draft into a Welsh one, which is missing in Welsh legislation as translation does not create drafting but a 'kosher' exercise of translation. The quality of legislation of Welsh drafts due to this weakness regarding legal terminology affects the quality of the legislation as the Welsh drafts are translated and not actually drafted.

The creation of database for the legal terminology will contribute towards terminological equivalence of bilingual legislative text. This database of legal terminology can harmonize legal terminology nationally and a constant update can give access to the new developed legal terms in Welsh.

The aspect of accessibility of legislation since devolution has been a matter of constant discussion as it forms the basis for rule of law. The form and style of the legislation after being partitioned and distributed between Wales and England in the process of devolution made law difficult to access. The formal and informal methods of communication of law challenging audience, the ability to understand, digest and live by it. The Welsh legislation needs revising, codifying and consolidating the law where it has become complicating and ambiguous as a result of long standing amendments. The drafting of Welsh law means that it is not to be translated from the English version but in fact created through a legislative draft in Welsh in its own right. This will in fact cure English draft if it has any ambiguities left and will create more clear and precise one in Welsh. It will also make the drafting actually bilingual.

⁹⁸ Prott, L.V (2013-2014) On Comparative Legal Terminology and Patrimoine Culturel, 8 J. Comp. L. 305 2013-2014

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