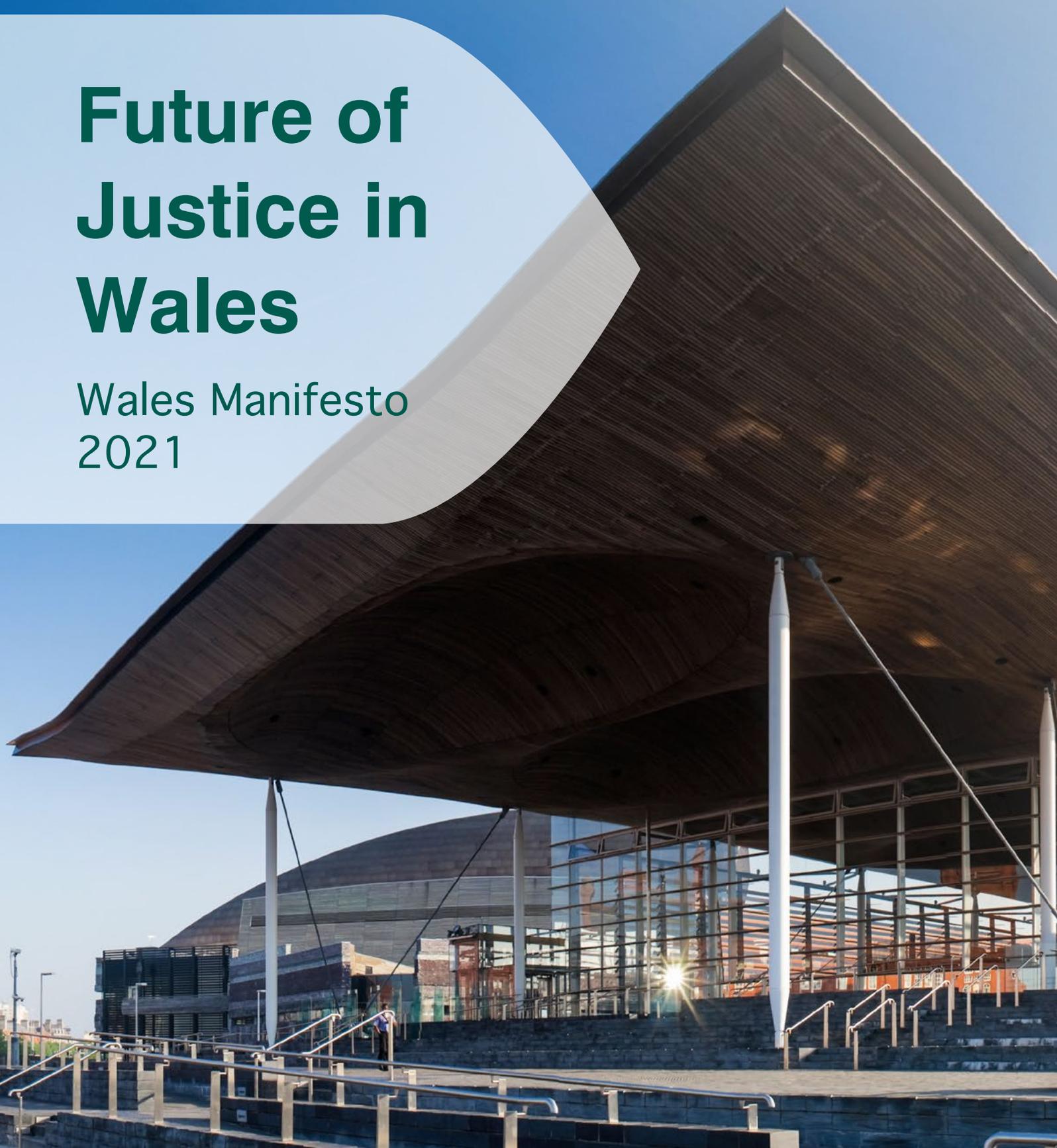




Cymdeithas y
Cyfreithwyr
The Law Society

Future of Justice in Wales

Wales Manifesto
2021



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Executive Summary

The Fifth Senedd term has been an exciting one for the advancement of justice in Wales. From the Report of the Commission on Justice to the Rapid Review of the Legal Sector, from the expanded remit of the Legislation, Justice and Constitution Committee to the ongoing inquiry into Making Justice Work, justice has risen up the devolved political agenda. As we approach the Sixth Senedd term, there is little sign of this trajectory slowing.

Engagement and cooperation between the Law Society and Welsh Government is at an all-time high. We are confident that this constructive working relationship can be maintained and built upon beyond this year's election. It is in this spirit that we present our manifesto for the next Welsh Government as a platform for future debate and interaction.

A summary of our recommendations is outlined over the following pages, with full details presented thereafter.

Please do not hesitate to contact the Wales Office at wales@lawsociety.org.uk should you require any further information.



It is in this spirit that we present our manifesto for the next Welsh Government as a platform for future debate and interaction

Devolution of Justice

We call on the next Welsh Government to:

- 1 Engage in reasoned and constructive dialogue with the UK Government with a view to developing a jurisdictional solution that accommodates Welsh law and the distinct needs of Wales.
- 2 Ensure that any future devolution neither creates barriers for the operation of justice in Wales, impedes the ability of practitioners to work across current single jurisdiction, nor damages the reputation of Wales and England as a global legal centre.
- 3 Continue with implementing the recommendations of the Commission on Justice in Wales that fall to Welsh Government via the Cabinet Sub-Committee on Justice and in collaboration with the broader legal community.



Engage in
**REASONED AND
CONSTRUCTIVE
DIALOGUE** with
the UK Government



Legal Aid

We call on the next Welsh Government to:

- 1 Make representations to the UK Government in support of restoring legal aid for early advice and reviewing the stringent means testing regime.
- 2 Amend the assessment criteria for grant awards under the Single Advice Fund, which have historically favoured large advice providers at the expense of indigenous local solicitors' firms.
- 3 Develop a mechanism whereby solicitors working in health-justice partnerships can access funding from the health budget, in line with the preventative agenda of the Well-being of Future Generations (Wales) Act 2015.



Develop a mechanism
whereby solicitors working in
health-justice partnerships can
**ACCESS FUNDING FROM
THE HEALTH BUDGET**



Criminal Justice System

We call on the next Welsh Government to:

- 1 Work with the UK Government to avoid any further erosion in Wales' existing justice infrastructure and ensure that no more courts are closed until replacement technologies have been fully tested and evaluated.
- 2 Make representations to the UK Government in support of increasing the low fees paid to criminal duty solicitors, which remain unchanged since 1998, with a view to attracting more young lawyers into the field and reversing its ageing trend.
- 3 Deliver the aspirations of the Youth Justice Blueprint and Female Offending Blueprint via continued robust and transparent partnership arrangements with the UK Government, HMPPS in Wales and other key partners.
- 4 Interest itself in the work and membership of the forthcoming Royal Commission on Criminal Justice to ensure a strong Welsh voice.



Ensure that **NO MORE COURTS ARE CLOSED** until replacement technologies have been fully tested and evaluated



Welsh Language and the SQE

We call on the next Welsh Government to:

- 1 Work with the SRA and other key stakeholders, including the Law Society and Higher Education Institutions, to map out a transparent pathway for achieving linguistic parity and ensure there is no slippage in the projected four-year timescale.
- 2 Encourage the SRA that they should aspire to providing the ability to answer both written and oral questions in Welsh when the SQE goes live.
- 3 Make loans available for aspiring solicitors seeking to take the SQE from 2021 so that they are able to afford the costs of preparing for and taking the exam, regardless of their own financial means.

MAKE LOANS AVAILABLE

for aspiring solicitors
seeking to take the
SQE from 2021



Legal Profession

We call on the next Welsh Government to:

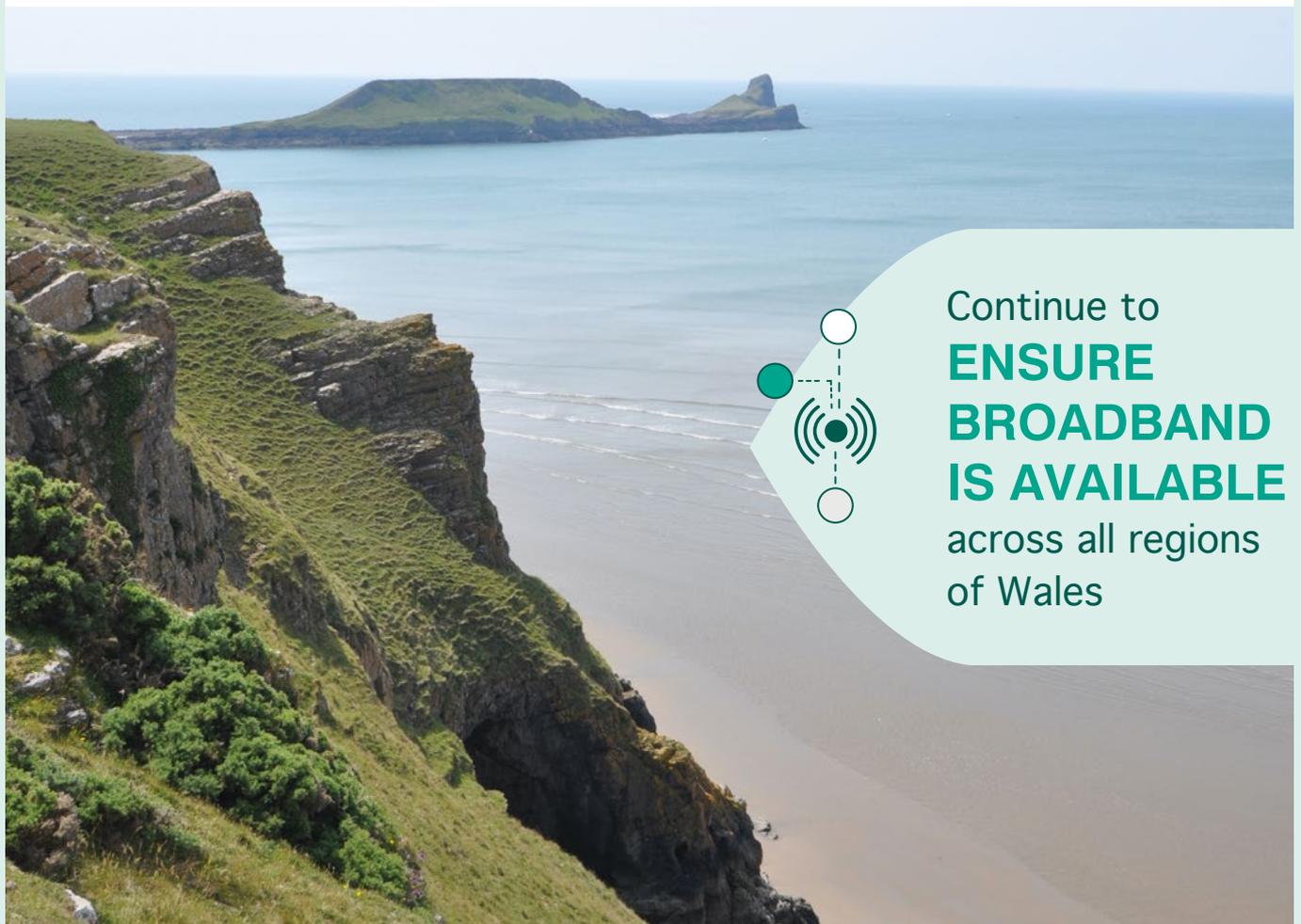
- 1 Maintain and develop a shared regulatory system capable of accommodating Welsh and English law and practice, thereby avoiding structural duplication and associated repercussions for the recruitment and retention of professionals in Wales.
- 2 Recognise the growing contribution of the legal services sector to the Welsh economy and promote the ability of solicitors in Wales to build on their current level of legal services activity.
- 3 Promote the interests of legal education and the awareness of Welsh law by progressing the work of new Law Council of Wales.
- 4 Monitor and review the effectiveness of new National Procurement Service (NPS) Solicitors Services Framework in building the capacity of the sector in Wales and avoiding the unnecessary loss of public sector legal work to exogenous firms.



Business Support and Investment

We call on the next Welsh Government to:

- 1 Go on investing in Business Wales to ensure solicitors can easily navigate the latest advice and support packages and make the right choices for their firms.
- 2 Continue to ensure broadband is available across all regions of Wales.
- 3 Develop a strategy which explores how access to justice can be improved using technology and ensures that all parts of Wales have access to the requisite digital connectivity infrastructure.
- 4 Establish a Wales LawTech Industry Group, with a view to future-proofing the sector and providing the necessary leadership and co-ordination to reconceptualise how the law is provided and consumed across the entire supply chain – clients, practitioners, courts and law-makers.



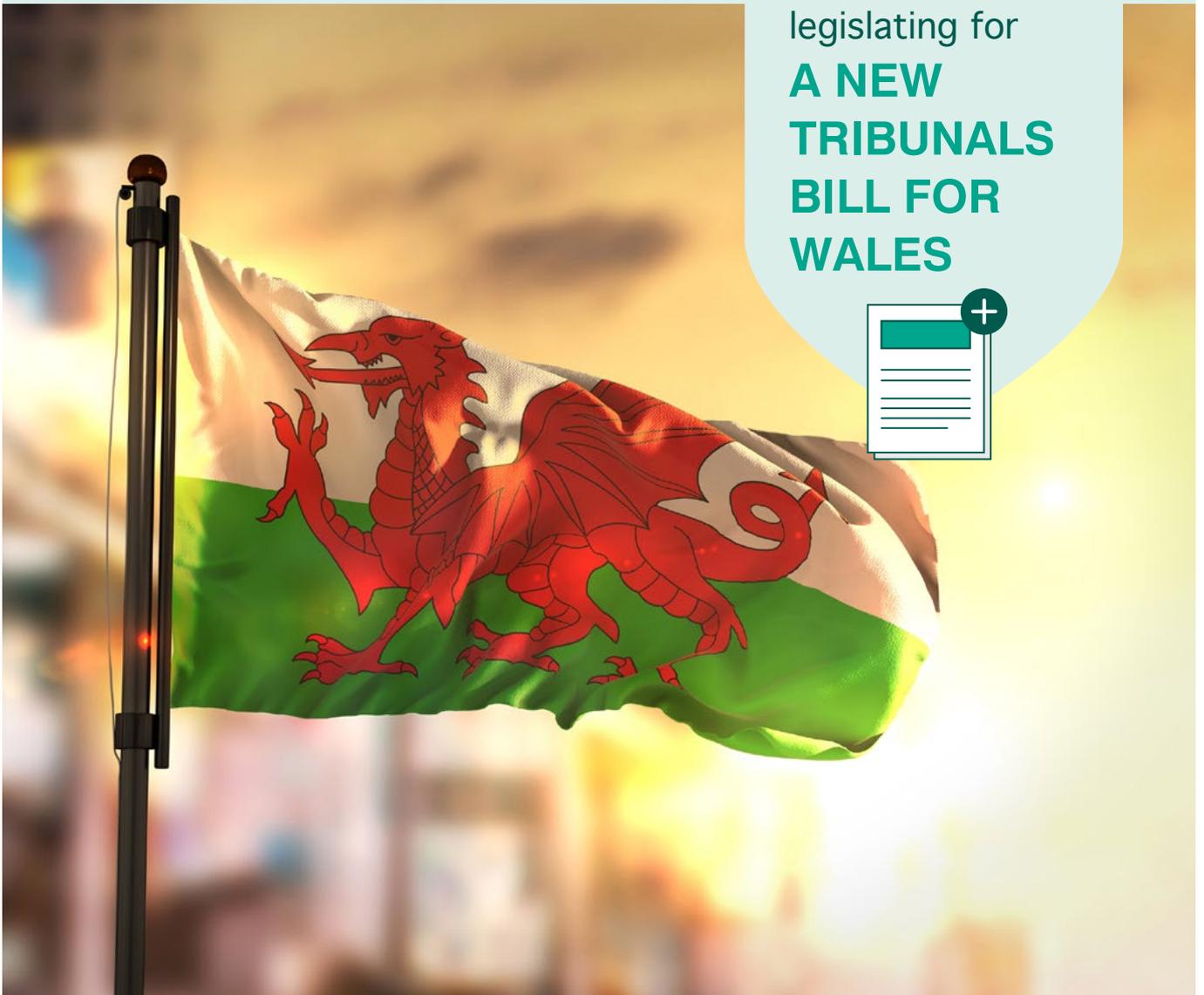
Continue to
**ENSURE
BROADBAND
IS AVAILABLE**
across all regions
of Wales

Image

We call on the next Welsh Government to:

- 1 Recognise the importance of image for promoting south Wales as a centre of excellence for legal services.
- 2 Undertake a feasibility study of the development of a new, purpose-built legal hub in Cardiff, co-locating civil courts, tribunal hearing rooms, accommodation for practitioners and research and training facilities.
- 3 Rationalise the law governing the operation of the devolved tribunals by implementing the recommendations of the Law Commission (expected to report in summer 2021) and legislating for a new Tribunals Bill for Wales.

legislating for
**A NEW
TRIBUNALS
BILL FOR
WALES**



Upholding the Rule of Law

We call on the next Welsh Government to:

- 1 Undertake a “lessons learned” exercise to review and examine the effectiveness of its predecessor’s response to the COVID-19 pandemic with particular attention to the implications for the rule of law and access to justice.
- 2 Identify areas of improvements for the planning and delivery of future responses to public health emergencies with particular attention to the implications for the rule of law and access to justice.

Among the important areas such a review could consider are:

- the need to adapt or remove measures to reflect the current situation, thereby enhancing the proportionality of responses;
- the need to develop better data collection and evaluation methods, thereby strengthening the evidence-base underpinning decisions; and
- the need to improve the clarity and completeness of information disseminated, thereby building and sustaining public trust and confidence.



IDENTIFY AREAS OF IMPROVEMENTS

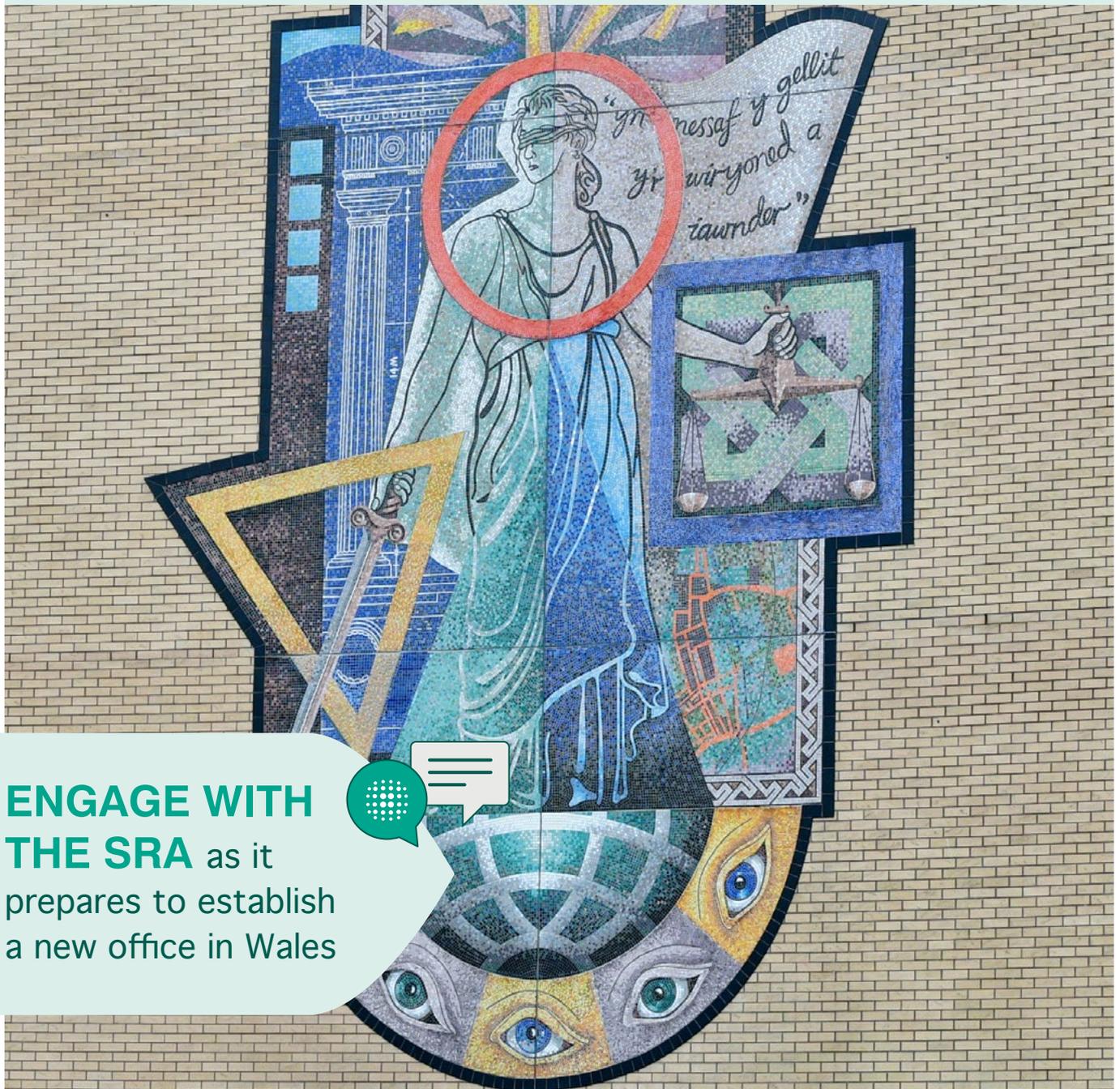
for the planning and
delivery of future
responses to public
health emergencies



Influencing Regulation and Supporting Compliance

We call on the next Welsh Government to:

- 1 Engage with the SRA as it prepares to establish a new office in Wales and enhance its engagement with the country's legal profession.
- 2 Work with the SRA to ensure its regulation meets the distinct needs of both legal practitioners and the users of legal services in Wales.



ENGAGE WITH THE SRA as it prepares to establish a new office in Wales

Promoting Access to Justice

Devolution of Justice

The Law Society welcomes the Thomas Commission's long-term vision for the future of justice in Wales. As the body of Welsh law grows, it is important that due consideration is given to the distinct needs of the Welsh public and the legal profession as they seek to ensure their businesses remain vibrant and sustainable going forward.

The Law Society believes that the full devolution of justice to Wales, as recommended by the Commission on Justice in Wales, must be accompanied by an adequate commitment to funding from UK Treasury (i.e. a full Barnett consequential of spending in England) and meaningful intergovernmental collaboration with the legal sector to ensure its success.

The ability of solicitors in Wales and England to practise across the border must be maintained without restriction, and the current single regulatory framework for

solicitors across Wales and England should be preserved. The Law Society is also concerned with promoting the single jurisdiction on the world stage and the reputation of Wales and England as a global legal centre, whilst recognising the unique circumstances of Welsh law.

The Law Society therefore calls for a co-ordinated and independent approach to system planning and delivery; one currently hindered by Wales' devolution settlement and political impasse.

We call on the next Welsh Government to:

- 1 Engage in reasoned and constructive dialogue with the UK Government with a view to developing a jurisdictional solution that accommodates Welsh law and the distinct needs of Wales.
- 2 Ensure that any future devolution neither creates barriers for the operation of justice in Wales, impedes the ability of practitioners to work across current single jurisdiction, nor damages the reputation of Wales and England as a global legal centre.
- 3 Continue with implementing the recommendations of the Commission on Justice in Wales that fall to Welsh Government via the Cabinet Sub-Committee on Justice and in collaboration with the broader legal community.

Legal Aid

The Law Society would welcome the introduction of a more robust and streamlined system for administering legal aid in Wales, as recommended by the Commission on Justice in Wales: “The funding for legal aid and for the third sector providing advice and assistance should be brought together in Wales to form a single fund under the strategic direction of an independent body.” Such a system has the potential to level up advice provision across the country and, subject to the fair allocation of funds, provide a much-needed economic stimulus to indigenous Welsh firms.

The Welsh Government’s Single Advice Fund has to date favoured large advice providers, such as Citizens Advice, who provide advice services nationally or on a regional basis. The Law Society would welcome a change in the criteria which recognises the importance of solicitors’ firms, particularly in rural localities, where there are often no other advice agencies. Enabling such firms to apply more easily to the Fund would enhance access to justice and help safeguard their economic resilience.

Solicitors also often relieve pressure on individuals through helping with debt, employment and other social welfare problems, which in turn contributes to better health outcomes. In line with the preventative agenda of Future Generations legislation, the Law Society also believes that a mechanism should be established whereby solicitors working in health-justice partnerships can access funding from the health budget.

We call on the next Welsh Government to:

- 1 Make representations to the UK Government in support of restoring legal aid for early advice and reviewing the stringent means testing regime.
- 2 Amend the assessment criteria for grant awards under the Single Advice Fund, which have historically favoured large advice providers at the expense of indigenous local solicitors’ firms.
- 3 Develop a mechanism whereby solicitors working in health-justice partnerships can access funding from the health budget, in line with the preventative agenda of the Well-being of Future Generations (Wales) Act 2015.

Criminal Justice System

The Law Society has longstanding concerns about the unsatisfactory state of the criminal justice system. Following a prolonged period of underinvestment and neglect, it faces mounting challenges, including a growing shortage of criminal duty solicitors and independent experts, an increasing number of court closures, and inadequate prison provision.

Criminal defence solicitors have received no fee increase since 1998, leading many to eschew a career in this vital field and the sector to become an increasingly ageing one. In 2018, the percentage of criminal duty solicitors over the age of 50 stood at 48% in north Wales, 49% in south Wales, 62% in west Wales and 64% in mid-Wales, while the comparable percentages for those under the age of 35 were 13%, 13%, 5% and 9% respectively. With insufficient numbers of young lawyers entering and remaining in the field, within five years' time there could be areas in Wales where people who have been arrested will not be able to access a duty solicitor.

Court closures have taken place at an unprecedented pace and scale over the past decade, leaving defendants, witnesses and practitioners having to travel further and longer to access court services. As at March 2019, Wales was home to 27 active HM Courts and Tribunals Service sites, down from 43 in 2015, while the number of magistrates' courts fell from 36 in 2010 to 14 in 2018. While the potential opportunities that technology offer for virtual and remote hearings are great, they have yet to be fully tested and proven. Until such time as they are, there will remain the need for cases to be heard in public at convenient and safe locations.

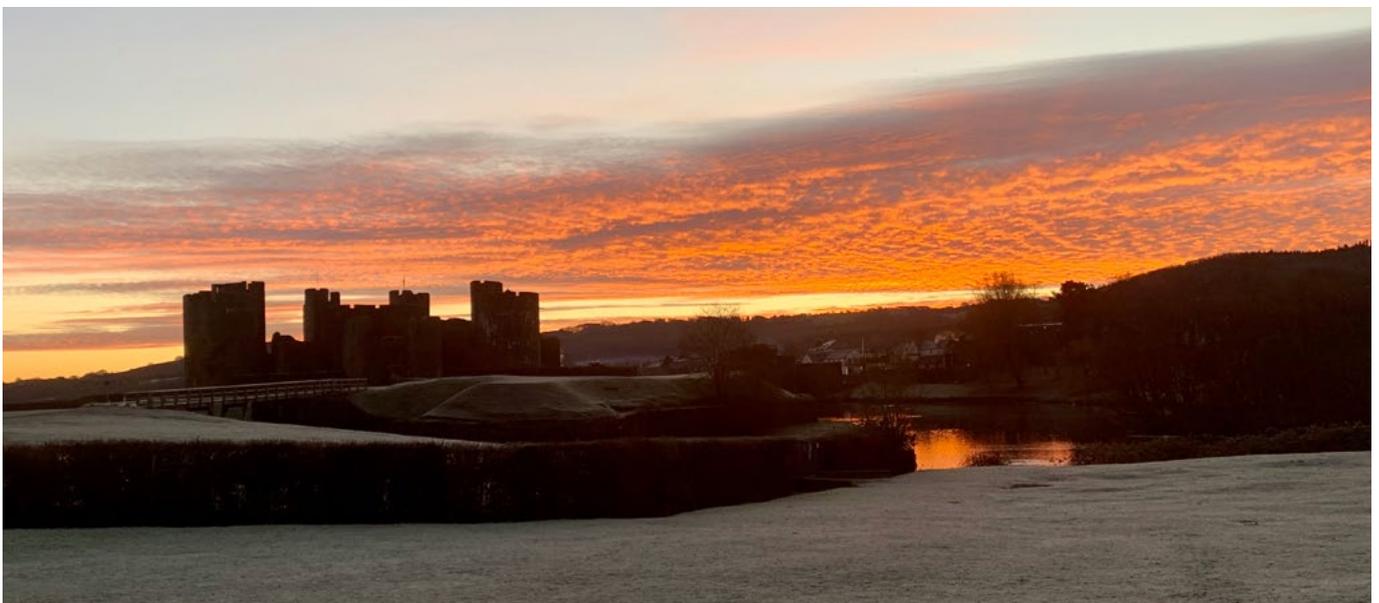
The inadequacy of provision for prisoners in Wales is by now well-rehearsed. The absence of facilities that can accommodate female or Category A offenders, for example, means that a significant proportion of Welsh prisoners serve their sentences in England. The Law Society welcomes the planned opening of the UK's first residential centre for women in Wales in 2021, but progress towards establishing parity of provision with male prisoners remains too slow. Meanwhile, overcrowding persists, as does the reality of offenders serving ineffectual and repeat short sentences, at great expense to the public purse.

Bold steps are required to realise a whole-system approach which meets the unique socio-political circumstances of Wales. The recently published Youth Justice and Female Offending Blueprints make an initial move in this direction. The Law Society also anticipates that the forthcoming Royal Commission on Criminal System, announced as part of the Queen's Speech in December 2019, will offer an opportunity to further advance some of the Thomas Commission's proposals and engage in meaningful dialogue about the future direction of criminal justice policy in Wales.

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We call on the next Welsh Government to:

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- 4 Interest itself in the work and membership of the forthcoming Royal Commission on Criminal Justice to ensure a strong Welsh voice.



Promoting a Modern, Diverse and Inclusive Profession

Welsh Language and the SQE

The Law Society regrets the decision of the Solicitors Regulation Authority to introduce the new SQE in Welsh on a phased basis, leading to full Welsh/English parity by year four of the new qualification, and not from implementation date (September 2021). The reasons for this are cited as being the cost implications of translating the assessment questions and difficulty in ensuring equivalence between the English and Welsh versions.

As things stand, candidates will be able to provide their responses to SQE2 *written* skills assessments in Welsh from implementation date, but not *oral* skills assessments; this will be introduced as part of Phase 2 from September 2022. The Law Society remains steadfast that domestic lawyers seeking

qualification should be able to do so using Welsh as their first language. We also note that the Legal Services Board has identified the provision of assessment in Welsh as an area against which the SRA's next application will be assessed.

We call on the next Welsh Government to:

- 1 Work with the SRA and other key stakeholders, including the Law Society and Higher Education Institutions, to map out a transparent pathway for achieving linguistic parity and ensure there is no slippage in projected four-year timescale.
- 2 Encourage the SRA that they should aspire to providing the ability to answer both written and oral questions in Welsh when the SQE goes live.
- 3 Make loans available for aspiring solicitors seeking to take the SQE from 2021 so that they are able to afford the costs of preparing for and taking the exam, regardless of their own financial means.

Supporting the Economic Value and Viability of Members' Businesses

Legal Profession

The Law Society agrees with the Commission on Justice in Wales that: “The present system where legal practitioners can practise in England and Wales and the legal professions are jointly regulated should be continued.” Removing the cross-border interoperability of legal professions would make little economic or business sense given that the practice of law will continue in a similar way irrespective of further devolution or, indeed, changes to the single jurisdiction.

The Wales Governance Centre’s 2019 analysis of the legal economy in Wales estimated that GVA in legal activities was £473 million in 2017, equivalent to £151 per person, up from £432 million in 2016. The Law Society is concerned with protecting and promoting this growth and the ability of solicitors in Wales to build on their current level of legal services activity. The Welsh Government has an obvious role to play in this regard via the effective design and delivery of NPS Solicitors Service Framework for the Welsh Public Sector.

If new bodies equivalent to the Law Society, the SRA and the solicitors’ Compensation Fund needed to be created for Wales, then the profession could be faced with a significant increase in the costs of representation and regulation. Moreover, it is inevitable that many practitioners would still regard being qualified in England as

advantageous in terms of prestige and career development. Any duplication in regulatory structures could have repercussions for the recruitment and retention of professionals in Wales, thereby exacerbating the “brain drain” which already affects the Welsh legal sector so keenly.

Whilst supporting a unified legal education and training approach across Wales and England, the Law Society believes there is space within the unified regulatory structure for tailored provisions to be made which take account of devolved arrangements. In that vein, the Law Society looks forward to working closely with the new Law Council of Wales which will seek to promote the interests of legal education and the awareness of Welsh law.

The present system where legal practitioners can practise in England and Wales and the legal professions are jointly regulated should be continued

The Wales Governance Centre's 2019 analysis of the legal economy in Wales estimated that GVA in legal activities was £473 million in 2017, equivalent to £151 per person, up from £432 million in 2016

We call on the next Welsh Government to:

- 1 Maintain and develop a shared regulatory system capable of accommodating Welsh and English law and practice, thereby avoiding structural duplication and associated repercussions for the recruitment and retention of professionals in Wales.
- 2 Recognise the growing contribution of the legal services sector to the Welsh economy and promote the ability of solicitors in Wales to build on their current level of legal services activity.
- 3 Promote the interests of legal education and the awareness of Welsh law by progressing the work of the new Law Council of Wales.
- 4 Monitor and review the effectiveness of the new NPS Solicitors Services Framework in building the capacity of the sector in Wales and avoiding the unnecessary loss of public sector legal work to exogenous firms.



Business Support and Investment

The Law Society fully endorses the aim of transforming south Wales into a legal centre and looks forward to working with partners to explore how this can be achieved. However, it is vitally important that the benefits of this venture and complementary business support infrastructure are felt right across the country so that firms in less urban parts of Wales are not left behind.

Legal practitioners, and the people they serve, need an infrastructure that can support a “digital first” approach to justice in Wales. Internet connectivity remains intermittent or non-existent in too many parts of Wales, which is limiting the ability of practices, particularly in rural areas, to take advantage of new technologies that could enhance their operations and services. The Law Society welcomes Superfast Cymru’s reconfigured offer to law firms in Wales and their commitment to work in partnership on running solicitor-specific seminars, but believes Wales is still losing out to other parts of the UK. Legal services are a critical service for the public good and more investment in digital infrastructure is required of Welsh Government to address gaps in provision.

The ongoing COVID-19 pandemic has brought into sharp relief the need for significant investment in the IT infrastructure of law firms. Many continue to operate using on-premises servers and are yet to transition to cloud-based solutions. This has clear implications for the ability of staff to work from home, thereby impacting on business profitability, and has the potential to give rise to data management and compliance issues. In October 2019, Swansea University and the Welsh Government announced a £5.6 million investment in the Legal Innovation Lab Wales operation which is intended to help law firms innovate at the intersection of law and technology. The Law Society believes this investment should be prioritised towards rolling out cloud-based solutions, such as Microsoft 365, across all firms in Wales so as to establish a digital baseline.

In October 2019, Swansea University and the Welsh Government announced a £5.6 million investment in the Legal Innovation Lab Wales operation

We call on the next Welsh Government to:

- 1 Go on investing in Business Wales to ensure solicitors can easily navigate the latest advice and support packages and make the right choices for their firms.
- 2 Continue to ensure broadband is available across all regions of Wales.
- 3 Develop a strategy which explores how access to justice can be improved using technology and ensures that all parts of Wales have access to the requisite digital connectivity infrastructure.
- 4 Establish a Wales LawTech Industry Group, with a view to future-proofing the sector and providing the necessary leadership and co-ordination to reconceptualise how the law is provided and consumed across the entire supply chain – clients, practitioners, courts and law-makers.



Image

The Law Society recommends that greater consideration be given to the future design and accommodation requirements for civil justice in Wales which, for various structural and cultural reasons, remains the poor relation of its criminal and family counterparts in resource, organisational and policy terms.

Non-devolved tribunals are currently poorly accommodated. The location of the Cardiff Civil Justice Centre to the rear of the old General Post Office can only be described as obscure. It is equally unsatisfactory that Employment Tribunals in Cardiff should be held in the Magistrates Court. The Welsh tribunal system similarly lacks its own infrastructure of hearing and administrative facilities yet, as the Senedd goes on making distinct provision for Wales, the scope of the Welsh Tribunals' jurisdiction can only increase.

The development of a new, purpose-built legal hub has the potential to place Cardiff in the top rank for hearing and professional facilities. Whilst recognising the significant cost implications of such a proposal, failure to invest will ultimately result in the Welsh capital losing out to other regional centres.



We call on the next Welsh Government to:

- 1 Recognise the importance of image for promoting south Wales as a centre of excellence for legal services.
- 2 Undertake a feasibility study of the development of a new, purpose-built legal hub in Cardiff, co-locating civil courts, tribunal hearing rooms, accommodation for practitioners and research and training facilities.
- 3 Rationalise the law governing the operation of the devolved tribunals by implementing the recommendations of the Law Commission (expected to report in summer 2021) and legislating for a new Tribunals Bill for Wales.

Upholding the Rule of Law

Throughout the COVID-19 pandemic, the Law Society has been concerned with ensuring that the measures put in place to keep the public safe, and their justice system functioning, respect the rule of law. Certain aspects of the incumbent Welsh Government's response have been a cause for concern, posing implications for the rule of law and the protection of individuals against excessive and disproportionate action.

By way of example, the Coronavirus Act 2020 gave local authorities the power to suspend their obligations under the Social Services and Wellbeing (Wales) Act 2014. This included duties to assess and meet individuals' care and support needs. Local authorities continued to be obliged to make provision where not doing so would be a breach of ECHR obligations, though this was a very high threshold. There has also been a concerning lack of publicly available data on the use of easements to the 2014 Act, thereby preventing any analysis of their impact from taking place.

The Welsh Government is (at the time of writing) consulting on whether to retain or suspend the social care provisions in question. Given that these powers were only ever intended to be temporary and the limited evidence as to their use, their necessity is called into question. This is equally true of their proportionality, given that the duty to assess care and support needs could have been met differently, such as through the use of technology, rather than removed entirely. It is important that the coming months are not used as a pilot for more permanent changes or that measures introduced in the context of an emergency should be used to cope with future strains on the system.

Additional concerns stem from the Health Protection (Coronavirus Restrictions) (No. 3) (Wales) Regulations 2020, which made provision for Wales' 17-day national "fire-break" lockdown. These Regulations empowered enforcement officers to enter premises using reasonable force if they had reasonable grounds for suspecting that lockdown restrictions were being contravened or were about to be contravened, or considered it necessary to enter to find out whether restrictions were being contravened. This can only be described as an extraordinarily broad power of entry. Laws of this nature must be made as visible and understandable as possible to ensure the public do not fall foul of them inadvertently. It is regrettable that so little effort was made by the Welsh Government to elucidate the significance of the provisions at the time.

We call on the next Welsh Government to:

- 1 Undertake a “lessons learned” exercise to review and examine the effectiveness of its predecessor’s response to the COVID-19 pandemic with particular attention to the implications for the rule of law and access to justice.
- 2 Identify areas of improvements for the planning and delivery of future responses to public health emergencies with particular attention to the implications for the rule of law and access to justice.

Among the important areas such a review could consider are:

- the need to adapt or remove measures to reflect the current situation, thereby enhancing the proportionality of responses;
- the need to develop better data collection and evaluation methods, thereby strengthening the evidence-base underpinning decisions; and
- the need to improve the clarity and completeness of information disseminated, thereby building and sustaining public trust and confidence.



Influencing Regulation and Money Laundering Rules, and Supporting Members to Comply

Although regulation of the legal profession and financial services are non-devolved matters reserved to Westminster, the Law Society believes that the Welsh Government is well placed to seek to influence their policy development in the best interests of Wales and to support members to comply.

The Solicitors Regulation Authority has recently announced plans to open a new office in Wales as part of increased engagement with the country's profession. Although the ongoing pandemic has delayed progress on this front, the regulator has reaffirmed its commitment to developing a Welsh presence as soon as is practicable. Currently, around 2.6% of practising solicitors and 4% of firms regulated by the SRA are based in Wales.

The establishment of the new office will enable the SRA to work more closely in partnership with key partners, including the Law Society Wales and Welsh Government, in relation to Wales' evolving justice landscape, and to make sure that its regulation meets the bespoke needs of both the country's users and providers of legal services. We encourage the Welsh Government to engage with the SRA as it prepares to expand its operations in Wales.

As part of their international strategy Welsh Government have identified Cyber Security as a core strand and priority for investment and the development of Welsh based solutions. Wales has a strong LawTech academic sector with centres including, Swansea University, the Innovation Hub at Stadium Plaza in Cardiff, as well as Alacrity in Newport, all designed to encourage the development of solutions to aid the delivery of secure and sustainable legal services pan-Wales which is testament to a strong eco-system which is encouraging the job growth.

The Law Society believe that a Welsh Government LawTech Steering Group which will work in collaboration with the proposed Law Council for Wales is imperative to ensure collaboration and sustainability for Legal Services in Wales.

We call on the next Welsh Government to:

- 1 Engage with the Solicitors Regulation Authority as it prepares to establish a new office in Wales and enhance its engagement with the country's legal profession.
- 2 Work with the Solicitors Regulation Authority to make sure that its regulation meets the distinct needs of both legal practitioners and the users of legal services in Wales.

The Law Society

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