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Llywodraeth Cymru  
Welsh Government

## Welsh Government Consultation Document

# Interpreting Welsh legislation

## Considering an interpretation Act for Wales

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

**Overview**

This document considers whether the Welsh Government should develop a modernised bespoke interpretation Act for Wales to replace the Interpretation Act 1978.

**How to respond**

Please send your written response to the address below or by email to the address provided.

**Further information and related documents**

**Large print, Braille and alternative language versions of this document are available on request.**

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**Data protection**

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing

when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## Contents

Foreword by the Counsel General for Wales .....	5
<b>PART 1: CURRENT LAW AND PRACTICE AND THE ARGUMENTS FOR REFORM</b> .....	<b>7</b>
Chapter 1: Form and accessibility of the law .....	7
Chapter 2: Use of interpretation Acts and other interpretation tools .....	10
Interpretation Acts – purpose and content .....	10
Other legislation which governs how legislation is to be interpreted .....	11
Government of Wales Act 2006 .....	11
Human Rights Act 1998 .....	12
The argument against interpretation Acts .....	12
Chapter 3: Interpretation Acts in the United Kingdom and elsewhere .....	14
Interpretation Acts in the United Kingdom .....	14
The Scottish Interpretation Act .....	14
The Northern Irish Interpretation Act .....	15
Other Interpretation Acts.....	16
Chapter 4: The Interpretation Act 1978 .....	17
The law to which the 1978 Act applies.....	17
The content of the 1978 Act.....	18
Core rules in the 1978 Act.....	18
Definitions in the 1978 Act of words, terms and concepts.....	18
Problems with the operation of the 1978 Act in relation to Wales.....	19
<b>PART 2: PROPOSALS FOR REFORM.....</b>	<b>21</b>
Chapter 5: Options for reform 1 – amending the 1978 Act .....	21
Reproducing Schedule 1 to the 1978 Act in the Welsh language.....	21
Other possible amendments to the 1978 Act .....	22
Chapter 6: Options for reform 2 – a new interpretation Act for Wales .....	24
Relationship between an interpretation Act for Wales and the 1978 Act .....	24
Potential benefits of an interpretation Act for Wales .....	24
The two-Act issue .....	25
Potential solutions to the two-Act issue.....	26
Content of an interpretation Act for Wales .....	28
<b>PART 3: A NEW INTERPRETATION ACT FOR WALES: MODERNISING AND</b> <b>INNOVATING .....</b>	<b>29</b>
A new model of interpretation Act .....	30

Chapter 7: changes to ‘core rules’ that could be made when reproducing the effects of the 1978 Act.....	31
Chapter 8: new provision that could be made in an interpretation Act for Wales .....	33
Rules about powers set out in Acts of the National Assembly .....	33
Time.....	34
Definitions.....	34
Directions given by the Welsh Ministers or others .....	35
Miscellaneous.....	35
Chapter 9: other matters which could be addressed in an interpretation Act for Wales .....	36
Welsh language matters .....	36
Provisions in the Government of Wales Act 2006 which could be brought into an interpretation Act for Wales, with or without modification.....	36
Standard form provision.....	37
Impact assessments.....	39
Annex A: Core rules in the Interpretation Act 1978 .....	40
Consultation Response Form.....	41

## **Foreword by the Counsel General for Wales**

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Since the establishment of the National Assembly of Wales, Welsh law and our processes for making law have matured, and a substantial body of legislation has developed. In future years this process will continue as we pass more laws that relate only to Wales, and the UK Parliament passes more laws that only apply to England. The development of a distinct Welsh legal jurisdiction in due course is an inevitable consequence if we are to maintain a proper and efficient administration of justice in Wales and keep up with this process of change.

Over 50 primary laws have been passed since the National Assembly's competence was enhanced in 2007 and more than 4,000 Statutory Instruments have been made since 1999. The National Assembly for Wales now has responsibility for law making across a wide range of subject areas.

As Counsel General my primary role is to provide legal advice to the Welsh Government and ensure that it acts lawfully. But as a law officer I also have a responsibility to uphold the rule of law and the law itself. I want our laws to be clear, certain and accessible without charge. This is particularly important in these times of limited access to legal advice, support and representation. My aim is to bring order to the laws we have inherited and to establish a new approach to future law-making in Wales – an approach that puts the citizens, the ultimate users of legislation, first.

I believe we can achieve this aim through a long term and sustained programme of consolidating the law and organising it in Legislative Codes covering the subject areas devolved to Wales. I also want to achieve improvements to the way laws are published and explained; and we must continue to ensure that our laws are well drafted and clear.

This consultation paper covers an issue that – while contributing to the broader ambition – is more technical and specialist. To provide certainty and clarity, legislation must at times be detailed and intricate. However, such complexity can be reduced by setting out certain principles, rules and definitions once so that they don't

have to be repeated in each new law we make. This is done by developing a specific Act on statutory interpretation; a routine feature of legal jurisdictions across the common law world.

Such Acts cover a range of procedural issues and define commonly used expressions in legislation which can assist in resolving uncertainties about the meaning of particular legislative provisions. They contain rules of statutory construction, such as provisions about when laws come into force, the calculation of time periods, and the effects of repeal, which provide legal certainty. One of their main purposes is to help to keep legislation shorter and more consistent.

Legislation passed by our Parliament and made by the Welsh Ministers is currently subject to the Interpretation Act 1978. This Act of the UK Parliament is nearly 40 years old and does not recognise that our laws are made in both English and Welsh – a deficiency that has been pointed out by the Law Commission and the National Assembly’s Constitutional and Legislative Affairs Committee. I believe that we should develop our own interpretation Act – as has been done in Scotland and Northern Ireland – which is bilingual and tailored to our jurisdiction. This consultation paper is concerned with how best to go about developing a Welsh interpretation Act and the issues that would arise were we to do so.

**Mick Antoniw AC/AM**  
**Y Cwnsler Cyffredinol**  
**Counsel General**

# PART 1: CURRENT LAW AND PRACTICE AND THE ARGUMENTS FOR REFORM

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*‘A general Interpretation Act can help to shorten and simplify particular Acts of Parliament, to clarify their effects by enacting rules of construction, and to standardise common-form provisions.’*

Report of the Renton Committee  
on the preparation of legislation, 1975<sup>1</sup>

1. Interpretation Acts are used to shorten and simplify legislation. They clarify the effect of statute law by establishing rules of construction, and shorten laws by adopting standardised provisions (for example definitions of commonly used words and terms) that do not then need to be repeated. At present all of the law applying in Wales<sup>2</sup> is interpreted by reference to an Act of the UK Parliament, the Interpretation Act 1978 (‘the 1978 Act’). This paper considers whether the Welsh Government should develop a interpretation Act for Wales.
2. The Welsh Government is seeking views on this matter. To help inform consideration, Part 1 of the consultation paper contains background and explanatory material on the current law and practice related to the options for reform considered in Parts 2 and 3 of the paper.
3. In this Part, Chapter 1 explains why the Welsh Government is considering this issue now. Chapter 2 provides a fuller explanation of interpretation Acts and other interpretation tools. Chapter 3 looks at the use of interpretation Acts within the UK and beyond. Chapter 4 provides an overview and explanation of the current law under the 1978 Act, including how it operates in relation to the law applying in Wales.
4. Some readers may wish to move straight to Part 2 where the proposals for reform are set out in Chapters 5 and 6. Chapters 7 to 9 in Part 3 of this paper go into further detail about the specific provisions that could be included in an interpretation Act for Wales.

## Chapter 1: Form and accessibility of the law

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5. The form and accessibility of law is central to the effective operation of the law. It is important that the legislation which constitutes the law is readily accessible in an up-to-date form, and is as easy as possible to read and understand. The

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<sup>1</sup> Cmnd. 6053.

<sup>2</sup> Paragraph 36 sets out the law applying in Wales.



issue of how to improve the form and accessibility of law has been under consideration for many years.

6. Two recent reports have explored how law applying in Wales is made and accessed:
  - a) *Making Laws in Wales* (October 2015) – a report of the Constitutional and Legislative Affairs Committee of the Fourth National Assembly for Wales on the various aspects of the ways in which laws were made by the National Assembly<sup>3</sup>, and
  - b) *Form and Accessibility of the Law Applicable in Wales* (June 2016) – a report by the Law Commission of England and Wales<sup>4</sup>.
7. In response to the findings and recommendations made in these reports, the Counsel General for Wales has launched a pilot programme of consolidation, codification and better publication of legislation made by the Welsh Ministers and the National Assembly for Wales ('the National Assembly')<sup>5</sup>. This paper, which considers the impact of the current operation of the 1978 Act on the form and accessibility of the law applying in Wales, is part of that pilot programme.
8. The 1978 Act of course predates devolution, and is in the English language only. It is in this context that the Law Commission and the Constitutional and Legislative Affairs Committee both considered the desirability of establishing an interpretation Act for Wales, having particular regard to the fact that such an Act would be made by the National Assembly, and would therefore exist in both English and Welsh.
9. The Constitutional and Legislative Affairs Committee saw '*merit in developing a separate Welsh interpretation Act as a means of improving the understanding of Welsh law*'<sup>6</sup>. The Law Commission's report noted issues with the fact that the 1978 Act formally exists only in the English language, leading to an absence of provision in the Welsh language about the interpretation of legislation in the Welsh language. Neither report was critical of the nature or content of the 1978 Act, but we believe that it is uncontroversial to state that the 1978 Act is now relatively outdated and, when compared to other interpretation Acts, quite narrow in its scope.

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<sup>3</sup> Report and associated documents available at:

<http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?lId=9054>

<sup>4</sup> Law Com No. 366. Report and associated documents available at:

<http://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/>

<sup>5</sup> See Record of Proceedings for 13 December 2016 (available at: <http://www.assembly.wales/en/bus-home/pages/rop.aspx?meetingid=4012&language=en&assembly=5&c=Record%20of%20Proceedings&startDt=13/12/2016&endDt=13/12/2016#449186>)

<sup>6</sup> Paragraph 176 of the Committee's report.

10. It is now a decade since the National Assembly was given legislation making powers, and the recent focus by the Law Commission and the National Assembly on the making of laws in Wales, along with the recognition of a concept of 'Welsh law' (see section A2 of the Government of Wales Act 2006<sup>7</sup>), provide an opportunity to consider the legislation governing the interpretation of the law applying in Wales.
11. The Counsel General is therefore considering whether the accessibility of the law applying in Wales would be improved by:
  - a) addressing the absence of Welsh language interpretation provisions in the 1978 Act, and
  - b) developing a new interpretation Act for Wales, which would apply (at the least) to Acts of the National Assembly and subordinate legislation made under those Acts.
12. In reviewing the current situation and the possibility of creating an interpretation Act for Wales, we have considered the continuing application of the 1978 Act to Acts of the National Assembly and subordinate legislation made under those Acts<sup>8</sup>, and to subordinate legislation made by the Welsh Ministers using powers (relating to devolved matters) given to them by an Act of the UK Parliament. This paper does not, however, contain any proposals concerning the application of the 1978 Act to Acts of the UK Parliament that apply in Wales, and nothing discussed in the paper involves changing the application of the 1978 Act to Acts of the UK Parliament.

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<sup>7</sup> As inserted by the Wales Act 2017.

<sup>8</sup> That is, orders, regulations, rules and so on.

## Chapter 2: Use of interpretation Acts and other interpretation tools

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### Interpretation Acts – purpose and content

13. Interpretation Acts are one of the ways in which legislatures have sought to make legislation accessible. New Zealand's Interpretation Act 1999 sets out the purposes of that Act in section 2:
- a) to state principles and rules for the interpretation of legislation; and
  - b) to shorten legislation; and
  - c) to promote consistency in the language and form of legislation.

This statement reflects a widely held view on the purpose and merits of interpretation Acts, which is a view we share. This was also the view of the influential Renton Committee, set out in its 1975 Report, *The Preparation of Legislation*<sup>9</sup>, which led to the creation of the 1978 Act.

14. Interpretation Acts generally contain:
- a) a set of what could be called 'core rules' covering a variety of matters which may or will arise when reading, interpreting and applying most, if not all other legislation. Broadly speaking, there are two kinds of rule:
    - i. rules which are arguably a matter of common sense, but which are put beyond any doubt through inclusion in an interpretation Act, and
    - ii. rules covering technical matters concerning the operation of legislation;
  - b) a list of definitions of words, terms and concepts which are common in legislation, and which by virtue of inclusion in an interpretation Act apply to all legislation to which the Act applies and so are put beyond doubt<sup>10</sup>.

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<sup>9</sup> Cmnd. 6053 and see the quotation at the start of Part 1 of this paper.

<sup>10</sup> A list of this kind could be said to be a kind of core rule (on the basis that it requires the reader to interpret the words etc. in question, wherever they appear in legislation, in accordance with the definition in the interpretation Act), but because different issues arise in relation to the creation of a list of definitions of words etc. in an interpretation Act for Wales, this paper will consider them separately.

## Other legislation which governs how legislation is to be interpreted

15. Interpretation Acts are not the only Acts containing provision that has an effect on how legislation is to be interpreted.
16. Words and terms are often defined where they first appear in legislation, and that definition will generally be specific to the legislation in question. Most Acts and most subordinate legislation also contain an 'interpretation provision', which sets out the definitions of words and terms which are specific to that Act or subordinate legislation; this provision is normally set out towards the end of an Act and at the beginning of subordinate legislation. Also, it is not unusual to find an interpretation provision at the end of a Part of an Act, which deals with words and terms arising in that Part.
17. There are also Acts which contain provision that has a direct effect on how the law is to be understood and which, because of their nature, are of constitutional significance. There are two particular examples which operate in relation to Acts of the National Assembly and subordinate legislation made under those Acts: the Government of Wales Act 2006 and the Human Rights Act 1998.

### Government of Wales Act 2006

18. Aside from granting the National Assembly its power to make Acts, the Government of Wales Act 2006 contains a number of provisions which influence how Acts of the National Assembly, and subordinate legislation made under those Acts, are to be interpreted. The following provisions of the Government of Wales Act 2006 are noteworthy in that regard:
  - a) one of the effects of section 108<sup>11</sup> is that such legislation is only lawful if it is compatible with EU law, and the European Convention of Human Rights ('the ECHR');
  - b) section 154(2) provides that such legislation is to be read '*as narrowly as required*' to enable it to be understood, as far as is possible, as being within legislative competence (which also means that it is to be read as being compliant with EU law and the ECHR);
  - c) section 156(1) provides that the English language and Welsh language texts of such legislation are to be treated as '*being of equal standing*'.

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<sup>11</sup> Section 108 will be replaced with section 108A when section 3 of the Wales Act 2017 is brought into force; what is said in this paragraph about section 108 applies also to section 108A.

## Human Rights Act 1998

19. The Human Rights Act 1998 has had a significant effect on how legislation in the United Kingdom is interpreted and understood. Whilst section 108 of the Government of Wales Act 2006 provides that Acts of the National Assembly, and subordinate legislation made under those Acts, are only lawful to the extent that they are compatible with the ECHR, section 3 of the Human Rights Act 1998 also expressly provides that such law must be '*read and given effect in a way which is compatible with [the ECHR]*'. This also applies to Acts of the UK Parliament, and subordinate legislation made under those Acts.

## **The argument against interpretation Acts**

20. It has been argued that interpretation Acts are a flawed concept, or at the least are problematic<sup>12</sup>. Their effects, and sometimes even their existence, are often not well known, including among legal practitioners, and as a result it is suggested that they can make the law less accessible. If a person does not know of the existence of a particular rule or definition set out in an interpretation Act, that person could end up with an incorrect understanding of the legislation they are reading. For example, in *Craies on Legislation* it is noted that some of the definitions set out in Schedule 1 to the 1978 Act give a '*precise and unexpectedly technical meaning to an expression, ignorance of which could lead to serious misunderstanding*'<sup>13</sup>.
21. At the very least, the existence of an interpretation Act means that the reader of another piece of legislation cannot obtain a full and accurate understanding of that legislation without looking outside it.
22. We see the force of such arguments, but do not accept them. The need for readers to have regard to law found outside of an individual piece of legislation is well precedented.
23. There is a long history of interpretation Acts in the jurisdiction of England and Wales, and elsewhere. Lord Brougham's Act of 1850 was one of the first, and was followed by the Interpretation Act 1889 which was consolidated, along with a range of other Acts, into the 1978 Act. There are also two other interpretation Acts in operation in the United Kingdom (in Scotland and Northern Ireland), and such Acts are commonplace across the Commonwealth and beyond<sup>14</sup>. In this context, the informed reader can be reasonably expected to know about the occasional need to consult the relevant interpretation Act.

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<sup>12</sup> For example, see Robert A. Duperron; *Interpretation Acts—Impediments to Legal Certainty and Access to the Law*, *Statute Law Rev* 2005 26 (1): 64-68.

<sup>13</sup> Greenberg, D (2017) *Craies on Legislation*, 11<sup>th</sup> Ed. London. Sweet and Maxwell. At para 22.1.4. This particular problem is considered further in Chapter 4 of this paper.

<sup>14</sup> This is discussed in the next Chapter.

24. An effective interpretation Act will achieve the purposes set out by the Renton Committee: it will shorten legislation and promote consistency in the language and form of legislation. These benefits cannot be overlooked.
25. We consider that, when preparing an interpretation Act, it is necessary to strike a balance between what can be set out once, for all purposes, in an interpretation Act, and what should be set out in full in each piece of legislation. If that balance is properly struck then, in our view, the benefits of an interpretation Act outweigh any concerns about their use. We also believe more can be done to inform users of legislation about interpretation Acts, and explain their effect.

## Chapter 3: Interpretation Acts in the United Kingdom and elsewhere

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### Interpretation Acts in the United Kingdom

26. There are three interpretation Acts in operation in the United Kingdom:

#### **Interpretation Act 1978**

The 1978 Act primarily applies to:

- Acts of the UK Parliament
- Legislation made using powers given by Acts of the UK Parliament (whether or not made by a Minister of the Crown)
- Acts and Measures of the National Assembly
- Legislation made using powers given by Acts and Measures of the National Assembly.

Sections 22, 23, 23A, 23B and 24 deal with the application of the 1978 Act to the various kinds of legislation which exists across the United Kingdom.

The 1978 Act has only limited application in relation to what it calls '*Northern Ireland legislation*', and to Acts of the Scottish Parliament and subordinate legislation made under those Acts.

The 1978 Act also applies to Measures of the Church of England.

#### **Interpretation Act (Northern Ireland) 1954**

Applies to Acts made by the Northern Ireland Assembly (and previously, the Parliament of Northern Ireland), and to subordinate legislation made under such Acts.

#### **Part 1 of the Interpretation and Legislative Reform (Scotland) Act 2010**

Applies to Acts of the Scottish Parliament, and to subordinate legislation made under such Acts.

### The Scottish Interpretation Act

27. After the Scotland Act 1998 was brought into force, the interpretation of Acts of the Scottish Parliament and subordinate legislation made under them was subject to the Scotland Act 1998 (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999<sup>15</sup> ('the Order'). This was a transitional Order made by the UK Government. The Order reproduced most of the substantive effects of the 1978 Act.

28. In early 2009 the Scottish Government consulted the public on a draft Bill to replace the Order, on the basis that '*after 10 years of devolution, the Scottish*

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<sup>15</sup> SI 1999/1379.

*Government now feels that it is time that the Parliament took ownership of these matters*<sup>16</sup>.

29. The draft Bill led to the Interpretation and Legislative Reform (Scotland) Act 2010 ('the Scottish Interpretation Act'). We have closely considered this Act and the steps that were taken in its preparation. The Scottish Interpretation Act was drafted in the wake of devolution, and the processes that informed its creation, and the nature and content of the Act itself, are relevant.
30. We note that the Scottish Interpretation Act does not depart radically from the Order, and by extension is quite similar in effect to the 1978 Act. There are two '*major changes of substance*' (as the Scottish Government put it):
  - a) the inclusion of a new provision stating that the Crown is bound by an Act of the Scottish Parliament only if the Act says so expressly,
  - b) the expansion of the provision on service of documents by post (addressed in section 7 of the 1978 Act), to address three different types of service, including by electronic means.
31. Beyond these changes, the Scottish Interpretation Act included some minor changes to clarify the wording and modernise the effect of the transitional Order. In particular, the Act does not reproduce the following (both of which were included in the Order, and which are also contained in the 1978 Act):
  - a) provision about measuring distance: this was omitted on the ground that it was so infrequently relied on that it would be more appropriate to make specific provision whenever required.
  - b) provision which stated that any reference to the Sovereign (such as '*the Queen*', '*the King*', '*Her Majesty*', '*His Majesty*' and so on) is to be read as a reference to the person who is Sovereign at the time the Act is being read: this was omitted as the Scottish Government concluded that this must be the case even without express law to that effect.

#### The Northern Irish Interpretation Act

32. The Interpretation Act (Northern Ireland) 1954 ('the Northern Irish Interpretation Act') is now relatively old. It obviously predates the 1978 Act, and was not prepared with the current devolution arrangements in mind.

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<sup>16</sup> Interpretation and Legislative Reform (Scotland) Bill: Consultation Paper, 12 January 2009. Available at: <http://www.gov.scot/Publications/2009/01/1>



33. For that reason, we focused mainly on the provisions of the Northern Irish Interpretation Act which are not reflected in the 1978 Act, but which could be useful in a new interpretation Act for Wales. We also noted the comments in Chapter 19 of the Renton Committee's report<sup>17</sup> and the comments of William Leitch (former First Parliamentary Draftsman in Northern Ireland)<sup>18</sup> which suggest that some of the provisions of the Northern Irish Interpretation Act should perhaps have been included in the 1978 Act.

## Other Interpretation Acts

34. We have also considered a number of other interpretation Acts from around the world, including Ireland; New Zealand; Canada; and New South Wales, Australia<sup>19</sup>. We agree with the Scottish Government's conclusion that the Ireland and New Zealand Acts are (up to a point, having regard to the differences in history, law and practice in these jurisdictions) *'useful models both in terms of content and as examples of modern legislative language'*<sup>20</sup>.

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<sup>17</sup> Cmnd. 6053.

<sup>18</sup> *Interpretation and the Interpretation Act 1978*, Statute Law Rev (1980) 1 (1): 5-13.

<sup>19</sup> The Scottish Government conducted their own comparative survey of interpretation Acts, and reached the following conclusion (set out at page 6 of *Interpretation and Legislative Reform (Scotland) Bill: Consultation Paper*, 12 January 2009), with which we agree: *'Along with its predecessor - the Interpretation Act 1889 - the 1978 Act has been tremendously influential in shaping the form and content of Interpretation Acts which are operative throughout much of the English-speaking parts of the world. This is particularly the case in those countries which are or were part of the Commonwealth...many of those Acts contain provisions that are very much modelled on those in the 1978 Act. Those Acts have been amended and replaced over the years, however, and quite a few now include provisions that are not to be found in the 1978 Act.'*

<sup>20</sup> *Interpretation and Legislative Reform (Scotland) Bill: Consultation Paper*, 12 January 2009: see page 7.

## Chapter 4: The Interpretation Act 1978

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### The law to which the 1978 Act applies

35. In the previous Chapter, we noted that there are three interpretation Acts applying across the United Kingdom. Wales and England share an interpretation Act (despite the existence of separate body of law made by the National Assembly and applying only in Wales), while Scotland and Northern Ireland have their own interpretation Acts.
36. The law applicable in Wales is, broadly speaking, made up of the following kinds of legislation:
- a) all Acts of the National Assembly (and all Measures of the National Assembly, made before the National Assembly was given the power to make Acts in 2011),
  - b) all subordinate legislation (that is, orders, regulations, rules and so on) made under those Acts (and Measures), which is generally made by the Welsh Ministers<sup>21</sup>,
  - c) all Acts of the UK Parliament which apply in Wales (some of which also apply in England), and
  - d) all subordinate legislation made under those Acts which:
    - i. is made by the Welsh Ministers<sup>22</sup>;
    - ii. is made by a Secretary of State in the UK Government<sup>23</sup> and applies in Wales.
37. The law applicable in England is, broadly speaking, made up of the following:
- a) all Acts of the UK Parliament which apply in England (some of which also apply in Wales),
  - b) all subordinate legislation which is made under those Acts and which:
    - i. is made by a Secretary of State in the UK Government<sup>24</sup>, and

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<sup>21</sup> Some public bodies in Wales also have specific powers to make subordinate legislation. For example, county councils and county borough councils can make orders in a number of circumstances. The 1978 Act applies in relation to subordinate legislation made by such bodies as it applies to the rest of the legislation set out in this paragraph.

<sup>22</sup> See the above footnote, which also applies here.

<sup>23</sup> Or another member of the UK Government empowered to make particular subordinate legislation.

ii. applies in England (whether or not it also applies in Wales).

38. The 1978 Act applies to all of the legislation set out in the preceding two paragraphs.
39. As noted in Chapter 1, we are not suggesting any change in the application of the 1978 Act to Acts of the UK Parliament. We believe that the 1978 Act should continue to apply to this legislation, including where it applies only in Wales.
40. The 1978 Act could continue to apply to certain kinds of legislation existing in the Welsh language, for example subordinate legislation made by the Welsh Ministers under powers given to them by Acts of the UK Parliament. We need to consider further the extent to which problems could occur if subordinate legislation were to be subject to a different interpretation Act than the UK Parliament Act under which it was made.

## **The content of the 1978 Act**

### Core rules in the 1978 Act

41. The 1978 Act contains a variety of core rules. By way of example, section 18 of the 1978 Act provides that if something is an offence under two Acts, an offender can only be punished once for any particular act or omission. Annex A provides a table of the core rules which apply in relation to Acts of the National Assembly and subordinate legislation made under those Acts.

### Definitions in the 1978 Act of words, terms and concepts

42. Schedule 1 to the 1978 Act sets out a list of words and terms which are relatively common in legislation. Many are readily understandable without recourse to the definition in the 1978 Act, but for technical reasons it is necessary for the definition to be set out in the law. Examples include:
- a) *'building regulations'*;
  - b) *'financial year'*;
  - c) *'PAYE income'*.

43. There are also some definitions of words and terms which give what is described in *Craies on Legislation* as a *'precise and unexpectedly technical*

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<sup>24</sup> See the above footnote. Note that, as in Wales, some public bodies have specific powers to make subordinate legislation.

meaning to an expression, ignorance of which could lead to serious misunderstanding<sup>25</sup>. Examples include:

- a) 'land' (which includes buildings and structures, land covered with water and estates, interests and rights in or over land),
- b) 'person' (which includes a body or persons corporate or unincorporated), and
- c) 'enactment' (which does not include enactments of the Scottish Parliament).

44. Section 5 of the 1978 Act (which introduces Schedule 1) provides that, in relation to any Act, the definitions in Schedule 1 apply '*unless the contrary intention appears*'. This means that it is possible to dis-apply the definitions of Schedule 1 in relation to a piece of legislation, either by stating so expressly in the legislation, or by implication (for example, if an Act provides that '*in this Act, "financial year" means the period of 12 months ending with 31 November*', the only conclusion that can be reached is that the definition in Schedule 1 to the 1978 Act has been disapplied).
45. Schedule 2 to the 1978 Act applies some of the provisions of that Act to legislation that was passed before the Act itself came into force. This Schedule is not relevant to the interpretation of Acts (or Measures) of the National Assembly or subordinate legislation made under them. The same is true of Schedule 3, which repeals a range of legislation.

### **Problems with the operation of the 1978 Act in relation to Wales**

46. There are a number of problems with the operation of the 1978 Act in relation to the law applying in Wales. Some, but not all, of these problems relate to the fact that some of the law applying in Wales exists in the English language and the Welsh language. These problems include the following:
- a) The 1978 Act has not been translated into the Welsh language (at least, not in any way which has legal effect). This is an obstacle to anyone seeking to fully understand Welsh language texts of legislation without recourse to English language texts. There are two aspects to this problem:
    - i. the core rules about the operation of legislation applying in Wales are not available in the Welsh language, which limits the accessibility of the Welsh language text of that legislation;

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<sup>25</sup> Greenberg, D (2017) *Craies on Legislation*, 11<sup>th</sup> Ed. London. Sweet and Maxwell. At para 22.1.4.

- ii. the absence of a Welsh language equivalent of the definitions of the words, phrases and concepts set out in Schedule 1 to the 1978 Act means that in order to fully understand certain Welsh language words or phrases in legislation, it is necessary to consult the English language text of the same legislation, and then consult the 1978 Act.

The existence of these issues seems contrary to the spirit of section 156(1) of the Government of Wales Act 2006, which states that the English and Welsh texts of legislation are to be treated as being of equal standing.

- b) It is necessary to read and apply section 23B of the 1978 Act to understand how the rest of that Act operates in relation to Acts of the National Assembly and subordinate legislation made under those Acts, and the operation of section 23B does not lead to the clearest possible result.
- c) Some of the words and terms defined in Schedule 1 to the 1978 Act are not relevant in relation to law applying only in Wales (for example, '*London borough*'), so their presence is arguably unhelpful.
- d) The 1978 Act is not as clear and accessible as it could be. There are also a number of specific issues with that Act; some of the provisions are ambiguous or have caused problems in practice, some are arguably redundant, and some are simply out of date (these issues are considered further in Chapter 7).
- e) Developments in legislative practice, the preparation of modern interpretation Acts in other jurisdictions and technological changes, have shown that an interpretation Act can provide an opportunity for new, potentially innovative provision which assists everyone who works with legislation. There are now a range of interpretation Acts in other jurisdictions which contain provisions that are not included in the 1978 Act but which could greatly increase the usefulness of an interpretation Act (see Chapter 8).

## **PART 2: PROPOSALS FOR REFORM**

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47. In this Part we set out the options for change. Although there are a variety of ways of reforming the law relating to the interpretation of legislation applying in Wales, they can be reduced to two fundamental options:
- amending the 1978 Act itself to address the absence of interpretation provision in the Welsh language, in particular the provision contained in Schedule 1 to that Act, which sets out definitions of a range of words and terms (considered in Chapter 5);
  - creating a new interpretation Act for Wales (Chapter 6).
48. It is important to bear in mind that **these options are not mutually exclusive**. Both options have their own strengths, weaknesses and limitations, but it is possible to envisage reform which would involve amending the 1978 Act only, creating a new interpretation Act only, or a combination of both.
49. We think that the absence of a Welsh language equivalent of Schedule 1 to the 1978 Act should be addressed in any event, whether by amending the 1978 Act itself, or by making provision in an interpretation Act for Wales which would apply to legislation in the Welsh language to which the 1978 Act continued to apply.
50. If, however, there is to be substantive reform in relation to the interpretation of legislation applying in Wales, we believe it should be delivered through a new, separate interpretation Act for Wales.
51. Part 3 of this paper considers the new provision that could be included in an interpretation Act for Wales.

### **Chapter 5: Options for reform 1 – amending the 1978 Act**

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#### Reproducing Schedule 1 to the 1978 Act in the Welsh language

52. Our view is that if the National Assembly legislates in relation to the interpretation of the law applying in Wales in any way, including by creating an interpretation Act for Wales (as considered in the next Chapter), that legislation should address the absence of a Welsh language version of Schedule 1 to the 1978 Act. This could be resolved in a number of ways, including by disapplying Schedule 1 and making new provision which would be part of an interpretation Act for Wales or, if the 1978 Act were to continue to apply in relation to any kind

of legislation existing in the Welsh language, by inserting a Welsh language version of Schedule 1 into the 1978 Act itself.

53. The main argument in favour of amending the 1978 Act in this way is that it would resolve a key shortcoming in relation to interpreting any Welsh language legislation to which that Act would continue to apply (though only up to a point, as some of the definitions in the 1978 Act cross-refer to other Acts which are only in the English language<sup>26</sup>).
54. This would also place the Welsh language in a key piece of UK Parliament legislation which governs how the law in England and Wales is to be read and understood.
55. If the 1978 Act were to be amended to include a translation of Schedule 1 (or if we were to deal with the absence of a Welsh language version of Schedule 1 in another way), we think that it would be unhelpful to depart from a direct translation of the content of that Schedule. This would create further substantive differences between the operation of that Act in relation to Acts of the UK Parliament and in relation to Acts of the National Assembly. We think that this would add complexity to the 1978 Act and could be confusing for readers. If there is to be substantive reform of the law governing the interpretation of legislation applying in Wales, the best means of delivering that reform is through a new, separate interpretation Act for Wales (considered in the next Chapter).
56. This means that although there are several provisions in Schedule 1 which are not generally relevant in relation to Wales, we would include these in the translation in order to ensure parity between the two languages. And for the same reason we would not be able to define any new terms that do not appear in English in Schedule 1, even though they might arise regularly in law applicable in Wales.

**Question 1: Should we insert a reproduction of Schedule 1 to the Interpretation Act 1978 in the Welsh language into that Act, or should we aim to apply an interpretation Act for Wales to as much Welsh language legislation as possible?**

#### Other possible amendments to the 1978 Act

57. We have considered how to address the issues arising from the fact that the provisions of the 1978 Act setting out core rules are not set out in the Welsh language (at least, not in a way which has legal effect). There are a variety of

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<sup>26</sup> For example, 'police area' is defined by reference to the Police Act 1996, so it is necessary to consult that Act to fully understand the definition.

ways to approach this issue, including by way of amending the 1978 Act to insert a translation of the core rules. We intend to further consider this approach, and other possible solutions to this issue.



## **Chapter 6: Options for reform 2 – a new interpretation Act for Wales**

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### **Relationship between an interpretation Act for Wales and the 1978 Act**

58. This Chapter considers the possibility of a separate interpretation Act for Wales, which would, at the least, apply to Acts of the National Assembly and subordinate legislation made under those Acts. We intend to consider further the ramifications of applying an interpretation Act for Wales to subordinate legislation made by the Welsh Ministers under powers (relating to devolved matters) given to them by Acts of the UK Parliament.
59. We believe that an interpretation Act for Wales provides an opportunity for change which would put in place a modern and accessible Act, which could have a tangible positive impact on anyone who reads and uses legislation applying in Wales. We think, however, that such an interpretation Act would need to reproduce the effect of many of the provisions in the 1978 Act, not least because it addresses many of the matters that need to be addressed in any interpretation Act. Also, the existence of what we will call in this paper the ‘two-Act issue’ (considered below) means that any departure from, or addition to, the effect of the 1978 Act in relation to Wales needs to be carefully considered.

### **Potential benefits of an interpretation Act for Wales**

60. The Law Commission stated that the only benefit of an interpretation Act which effectively reproduces the rules contained in the 1978 Act would be the creation of a text setting out those rules in Welsh<sup>27</sup>. We think that this benefit is significant, and is reason alone to give serious consideration to creating an interpretation Act for Wales. However, we believe that there are further potential benefits, which arguably outweigh the potential drawbacks of having two interpretation Acts operating in Wales (see consideration of the two-Act issue below):
- a) It would lead to a modern, clear and accessible interpretation Act, which would in turn lead to greater accessibility of the law to which the interpretation Act would apply.
  - b) The interpretation Act governing Acts of the Assembly and subordinate legislation made under those Acts would exist in the Welsh language.

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<sup>27</sup> Law Com No. 366, paragraph 10.58.

- c) It would provide an opportunity to include new and potentially innovative provision, beyond what is included in the 1978 Act.
- d) The National Assembly would take ownership of the law governing how its legislation is to be interpreted.
- e) The Act, unlike the 1978 Act, would contain only provision which is relevant to the law applying in Wales.
- f) Redundant provisions in the 1978 Act would not be included in an interpretation Act for Wales<sup>28</sup>.
- g) The creation of the Act would help to raise awareness of the relevance of interpretation Act, among interested people at least.

**Question 2: Do you agree with the potential benefits of an Interpretation Act for Wales identified in this consultation paper?**

## **The two-Act issue**

61. The two-Act issue arises because an interpretation Act for Wales would apply to Acts of the National Assembly and to subordinate legislation made under those Acts (and we are considering whether it should apply to subordinate legislation made by the Welsh Ministers under powers (relating to devolved matters) given to them by Acts of the UK Parliament). The 1978 Act would continue to apply to all Acts of the UK Parliament, including those applying in Wales (and could continue to apply to subordinate legislation made by the Welsh Ministers under those Acts). In any event, the fact that the law applying in Wales would be subject to two interpretation Acts creates the possibility that a person might rely on the wrong interpretation Act.
62. In particular, the two-Act issue could lead to confusion in a situation where an Act of the National Assembly (Act A) inserts new text into an Act of the UK Parliament (Act B). In this situation Act A would be subject to the interpretation Act for Wales, whilst the text being inserted into Act B would ultimately be subject to the 1978 Act.
63. Finally, we are aware that careful consideration will need to be given to the interaction of the 1978 Act with an interpretation Act for Wales. Because England and Wales together make up a single jurisdiction, there is a significant

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<sup>28</sup> The individual provisions of the 1978 Act which are suitable for change when being carried across to an interpretation Act for Wales are considered in the next Chapter.

amount of existing legislation that applies in both countries and it is often necessary for Acts of the National Assembly to amend Acts of the UK Parliament. This means that the interaction of the 1978 Act and any interpretation Act for Wales will need to be taken into account when drafting the interpretation Act for Wales, and subsequently in practice.

64. Nevertheless, we do not think that the two-Act issue necessarily negates the potential benefits of having an interpretation Act for Wales. A similar issue arises in Scotland and Northern Ireland. This is more or less an inevitable consequence, in each of the current UK devolution models, of having a 'devolved' interpretation Act operating alongside the 1978 Act. We are not aware that this has caused any particular problems in either of these jurisdictions.

#### Potential solutions to the two-Act issue

65. We believe that the less a new interpretation Act for Wales departs from the content of the 1978 Act, the less of an issue the two-Act issue is likely to be in practice. However, the creation of such an Act does provide an opportunity for new provision, and to make changes to the existing system, that should not be overlooked. We have therefore looked at a number of potential ways to limit the two-Act issue.
66. Before considering these further, it is worth noting that interpretation Acts generally contain a provision about how they apply to other legislation<sup>29</sup>. The use of such provision means that nothing needs to be said in any other Act about the application of the relevant interpretation Act.
67. Methods to limit the potential effects of the two-Act issue include the following (in addition to reducing the application of the 1978 Act to the law applying in Wales to the greatest possible extent):
- a) **Using explanatory notes:** a practice could be established in explanatory notes<sup>30</sup>, so that in future there is always an entry in the Notes for an Act which makes clear which Act applies. The explanation would not, however, be on the face of the Act in question, which means that it could be missed.
  - b) **Using 'signpost' provisions:** every Act could contain a provision (perhaps within the interpretation section which is included in most

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<sup>29</sup> See sections 22, 23 and 23B of the 1978 Act, which set out how that Act applies to UK Parliament and Assembly Acts, and subordinate legislation made under those Acts.

<sup>30</sup> Explanatory notes are published alongside Acts on legislation.gov.uk. In subordinate legislation, the explanatory note is usually part of the same document as the legislation itself.

Acts) that expressly states which interpretation Act applies to it. The signpost provision would not have the legal effect of applying the interpretation Act, as this would be dealt with in the interpretation Act itself. This means that the signpost provision would arguably be redundant, and redundant or unnecessary provisions have the potential to cause problems<sup>31</sup>; particularly if, for any reason, the ‘signpost’ provision was not included in a particular piece of legislation when it was intended that the interpretation Act should apply to it. This could lead to confusion for a reader who might think that, because the signpost was missing from the Act, the interpretation Act did not apply to it.

- c) **Reversing the normal means of application of an interpretation Act:** instead of having a provision in an interpretation Act for Wales setting out the legislation to which it applies, it would be possible to instead provide that the interpretation Act for Wales will only apply to those Acts and other legislation which contain provision expressly applying the interpretation Act. This would mean that the relevant legislation would contain a legally operative statement which is both necessary and clear, and would let the reader know which interpretation Act applies. This would not require a reader of the Act to know in advance that the interpretation Act applied to the Act they were reading. But the application provision would have to be included in every Act of the National Assembly, and potentially all subordinate legislation made under those Acts. We would need to consider further this approach in relation to subordinate legislation made by the Welsh Ministers under powers given them to by an Act of the UK Parliament, if an interpretation Act for Wales were to apply to any such legislation.
- d) **Using the Cyfraith Cymru/Law Wales website<sup>32</sup>:** more generally, in particular given that awareness of the application of interpretation Acts is not widespread, explanatory material could be provided to readers of legislation explaining the effect of an interpretation Act for Wales and the relationship between it and the 1978 Act.

**Question 3: Which of the potential solutions to the two-Act issue would you consider to be most helpful to users of the legislation?**

<sup>31</sup> Greenberg, D (2017) *Craies on Legislation, 11<sup>th</sup> Ed.* London. Sweet and Maxwell. See paragraphs 8.1.12 and 8.1.13 which consider the maxim that ‘*unnecessary words go septic*’.

<sup>32</sup> This website is hosted by the Welsh Government and provides information about Wales’ constitutional arrangements and law made in Wales.

**Question 4: Do you consider there are any practical issues arising from any of the potential solutions to the two-Act issue?**

## **Content of an interpretation Act for Wales**

68. If there were to be an interpretation Act for Wales, a key issue would be the extent to which that Act diverges from, or goes beyond, the provisions in the 1978 Act. As already set out, there are certain provisions in the 1978 Act which may need to be closely followed in order to minimise or avoid technical and practical issues. And even where there is more freedom to depart from the provisions in the 1978 Act, there are arguments that the effect of those provisions should be reproduced, if not the wording used.
69. However, the creation of an interpretation Act for Wales would be an opportunity to make different provision from that in the 1978 Act, including entirely new provision. In particular, it would provide an opportunity to:
- a) reflect matters which arise in, or in relation to, Acts of the National Assembly and subordinate legislation made under those Acts, and possibly other legislation existing in the Welsh language;
  - b) deal with any new matters which are thought worthy of inclusion of an interpretation Act;
  - c) extend provision in the 1978 Act so that it covers matters which were not envisaged when the 1978 Act was drafted; and
  - d) address any perceived shortcomings in the operation of the 1978 Act.
70. In the next Part we set out a variety of ways in which an interpretation Act for Wales could go beyond the 1978 Act.

## **PART 3: A NEW INTERPRETATION ACT FOR WALES: MODERNISING AND INNOVATING**

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71. Building on Part 2, the chapters in this Part look at ways in which an interpretation Act for Wales could modernise and innovate<sup>33</sup>:
- a) Chapter 7 looks at various changes that could be made to the core rules of the 1978 Act if they are carried across to an interpretation Act for Wales.
  - b) Chapter 8 sets out a range of new provisions which could be included in an interpretation Act for Wales, which are not included in the 1978 Act.
  - c) Chapter 9 looks at a number of other matters which could be addressed in an interpretation Act for Wales.
72. Before considering the various options for change set out in this Part, it is worth noting that many of the interpretation Acts in other jurisdictions across the world, and even within the United Kingdom, go beyond the limits of the 1978 Act, and deal with a wider range of issues. The joint Law Commissions' report of 1969 on the Interpretation of Statutes<sup>34</sup> envisaged something more radical than the consolidation of earlier interpretation legislation that was ultimately delivered in the 1978 Act. In short, there is a range of opinion which suggests that the scope of the 1978 Act is relatively modest, and this is supported by an analysis of other interpretation Acts.
73. We think that including provision which does not have analogous provision in the 1978 Act is something that needs to be considered on a case-by-case basis. With each potential new provision the question is ultimately whether the benefit of the inclusion of that provision in an interpretation Act for Wales outweighs the cost of exacerbating the two-Act issue.
74. But although there will be different arguments concerning the inclusion of each provision, the following principles apply:
- a) a change to the substantive effect of, or the omission of, a 1978 Act core rule should be made with caution as it could lead to problems in

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<sup>33</sup> This paper does not consider the extent to which a new interpretation Act for Wales would apply to legislation in existence before such an Act comes into force. It is likely that at least some of the provision in that Act which differs from that in the 1978 Act would not apply to pre-existing legislation. If that Act were to apply at all.

<sup>34</sup> L.C. No. 21, Scot. L.C. No. 11.

practice if the wrong interpretation Act is applied, and would be contrary to the aim of improving accessibility;

- b) making a minor change or addition to a core rule may be less problematic;
- c) adding entirely new provision could, depending on the provision in question, be done without a significant risk of creating issues in practice.

#### A new model of interpretation Act

- 75. A traditional view of interpretation Acts is that ultimately a reader should be aware of them, and of the nature of the rules and definitions they contain, but should only occasionally have to turn to them. This traditional view has informed our view of what an interpretation Act for Wales should contain.
- 76. In recent years, the way in which legislation is accessed and read has changed. Most legislation is now read online, and it is possible, through the use of hyperlinks and the provision of information onscreen beyond the content of the legislation itself, to draw the attention of the reader to the content of another relevant Act, including an interpretation Act. The connections between a piece of legislation and an interpretation Act could theoretically be presented in a way that does not compromise, and should enhance, accessibility.
- 77. This in turn arguably means that a greater amount of information can be stated once in an interpretation Act, and cross-referred to in other Acts. A range of rules, propositions and definitions that, at present, would be set out in full in each Act that required them could instead be set out in an interpretation Act, in the knowledge that the reader could be made aware of them and could easily access them. This could further enhance the benefits of an interpretation Act; namely, more concise legislation and greater consistency. Regular recourse by readers to the interpretation Act would mean that its existence and content could eventually become far better known.
- 78. This is, however, a significant departure from the current operation of the 1978 Act and most, if not all, other interpretation Acts. We question whether the benefit of such an approach outweighs the problems it could give rise to. In particular, we think a new approach to how legislation is presented onscreen may be a pre-requisite, which could lead to a greater burden for the editors of websites presenting legislation online.

## Chapter 7: changes to ‘core rules’ that could be made when reproducing the effects of the 1978 Act

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79. We believe that, when reproducing the effects of the 1978 Act in an interpretation Act for Wales, the following changes should be considered (references to sections below are references to sections in the 1978 Act):
- a) Section 6(a) and (b) (gender) could be omitted, as it is at odds with the practice of gender-neutral drafting adopted in relation to Acts of the National Assembly and Acts of the UK Parliament, and subordinate legislation made under those Acts<sup>35</sup>. We also note this section is not replicated in the Scottish Interpretation Act. There are, however, particular issues in relation to the use of grammatical gender in the Welsh language which would need to be considered.
  - b) Section 7 (service by post) could be updated to deal with electronic communication. This section is updated in the Scottish Interpretation Act.
  - c) Section 8 (distance) could be omitted; this section is not replicated in the Scottish Interpretation Act on the ground that it is only relied on infrequently, and can therefore be addressed where necessary<sup>36</sup>.
  - d) Section 10 (references to the Sovereign) could be omitted; this section is not replicated in the Scottish Interpretation Act on the ground that it is not necessary<sup>37</sup>.
  - e) Section 13 (anticipatory exercise of powers) could be clarified, and we understand that it is not relied on as often as it could be because of doubts about its limits.
  - f) Section 15 (repeal of repeal) could be extended to prevent the revival of rules in the common law.

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<sup>35</sup> Para 22.1.9 of *Craies on Legislation* (11<sup>th</sup> ed) notes that the ‘publicly proclaimed adoption of a gender-neutral style has probably displaced s.6(a) and (b) for all practical purposes in the construction of legislation drafted since the...policy came into effect’ [Greenberg, D (2017) *Craies on Legislation*, 11<sup>th</sup> Ed. London. Sweet and Maxwell]

<sup>36</sup> *Craies on Legislation* (11<sup>th</sup> ed) supports this assertion, to some extent at least. At para 22.1.13 it is stated that ‘[i]t is likely that rebuttal of this presumption would be implied in most circumstances in which the presumption would not itself be supplied by common sense’. [Greenberg, D (2017) *Craies on Legislation*, 11<sup>th</sup> Ed. London. Sweet and Maxwell]

<sup>37</sup> *Craies on Legislation* (11<sup>th</sup> ed) supports this assertion at para 22.1.15: ‘This provision ... would stand to reason were it not expressed...’ [Greenberg, D (2017) *Craies on Legislation*, 11<sup>th</sup> Ed. London. Sweet and Maxwell]



- g) The text of an interpretation Act for Wales should incorporate the effect of section 23B (application of 1978 Act to Wales) so that the text accurately reflects the application of the Act.

**Question 5: What are your views on the potential changes to the 'core rules', set out in Chapter 7?**

## Chapter 8: new provision that could be made in an interpretation Act for Wales

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80. The following list sets out the effects of a range of provisions that could be included in an interpretation Act for Wales, but which were not included in the 1978 Act. Where the suggestions reflect provision included in the Scottish or Northern Irish Interpretation Acts, or in another Act of the UK Parliament, this is noted.

### Rules about powers set out in Acts of the National Assembly

- **Powers may be exercised differently in relation to different cases or purposes.** This would operate where the Welsh Ministers (or any other person) exercise a power given by an Act of the National Assembly, in particular powers to make subordinate legislation. Provision achieving this result is common in existing legislation.
- **Powers to bring legislation into force may be used to appoint different days for different purposes.** Provision achieving this result is common in existing legislation. Section 8 of the Scottish Interpretation Act contains provision to this effect.
- **Powers for the Welsh Ministers to make regulations and orders (and possibly other forms of subordinate legislation) must always be exercised by making a statutory instrument.** Provision to this effect is almost always included in Acts. Providing that subordinate legislation is to be made by statutory instrument means that the processes set out in the Statutory Instruments Act 1946 for scrutinising the content of statutory instruments, and for their publication and dissemination will apply.
- **Power to amend Acts to replace a reference to a date on which an event occurs with the actual date on which that event occurred.** For example, where a section in an Act provides that something is permitted *'the day after section 10 comes into force'*, and section 10 comes into force on 1 January 2018, the Act could be amended to replace *'the day after section 10 comes into force'*, with *'the day after 1 January 2018'*. Section 104 of the Deregulation Act 2015, which applies only in relation to England, contains provision along these lines.
- **Powers to make subordinate legislation include an ancillary power to make incidental, supplementary or transitional provision.** Provision to this effect is almost always included in every Act that provides a power to make subordinate legislation.

- **Powers to appoint a person to an office include associated powers.** This would be used where legislation established a new office. Its existence would render it unnecessary to make further related but obvious provision; for example, powers to remove a person from office, to re-appoint and so on. Section 5 of the Scottish Interpretation Act contains provision to this effect.
- **Powers to make legislation which are subject to different procedures may be combined in the same statutory instrument.** It is often necessary or desirable to exercise a range of powers to make subordinate legislation at the same time, but the subordinate legislation is sometimes subject to different scrutiny procedures in the National Assembly. This provision would allow for such subordinate legislation to be placed together in single statutory instrument, which would be of greater administrative convenience.
- **Power to correct obvious errors in legislation.** Occasionally, errors are made in legislation, and in the case of an Act this cannot easily be remedied (as, broadly speaking, only an Act can amend an Act). A power to correct obvious errors using subordinate legislation could prove useful, and would assist everyone affected by the legislation. It would also help to avoid placing the courts in difficult situations, when confronted with such errors<sup>38</sup>.

## Time

- **Calculation of time in relation to sittings of the National Assembly.**
- **Calculation of periods of time.** This would help to avoid the sometimes quite detailed provision which is needed when describing a period of time. For example, an interpretation Act could provide that a period which is expressed as starting following a particular event is to begin at the start of the day on which the event occurs. Section 39 of the Northern Irish Interpretation Act provides an example of such provision.

## Definitions

- ‘Local authority’; ‘hospital’; ‘NHS trust’: we envisage that a general definition of these terms would serve to restrict them so that they only refer to bodies in Wales.

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<sup>38</sup> The courts can address errors in legislation if they are sure of ‘(1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed.’ *Inco Europe Ltd and others v First Choice Distribution (a firm) and others* [2000] 2 All ER 109

- ‘National Assembly for Wales’; ‘the Assembly’; ‘Assembly Commission’.
- ‘Primary legislation’; ‘subordinate legislation’; ‘devolved legislation’; ‘enactment’.
- ‘Working day’.

### **Directions given by the Welsh Ministers or others**

- **Directions can be amended or withdrawn.** This would provide consistency and remove doubt about something that is probably a matter of common sense.
- **Directions must be given in writing.**

### **Miscellaneous**

- **Matters relating to electronic communication.** For example, about what conditions need to be met before e-mail can be relied on as a means of serving a document, or giving notice etc.
- **Crown application.** This would address a matter currently governed by the common law, by providing that the Crown is bound by an Act unless contrary provision is made (or vice versa). Section 20 of the Scottish Interpretation Act deals with this matter.
- **Forms which differ from the form they are required by law to take are not invalid.** Section 21 of the Scottish Interpretation Act contains provision to this effect.

**Question 6: What are your views on the potential new provisions that could be included in an interpretation Act for Wales, set out in Chapter 8?**

**Question 7: Are there any extra new provisions, to those set out in Chapter 8, that you would wish to include in an interpretation Act for Wales?**

## Chapter 9: other matters which could be addressed in an interpretation Act for Wales

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### Welsh language matters

81. We are considering whether provision for dealing with issues which arise only in relation to the Welsh language would assist. In particular, we are considering provision about the consistent application of definitions and other rules regardless of variations in terminology arising as a result of mutations or gender. We are also considering provision about the application of the common law and common law concepts (which are generally referred to by reference to expressions with particular meanings which exist only in the English language).
82. It would be possible to deal with these issues in a targeted manner, with provision which addressed these specific matters. Another possibility would be to have a more general provision about how to interpret variations in language arising because of rules of grammar. There are examples of this in other interpretation Acts in jurisdictions with bilingual legislation; for example Hong Kong's Interpretation and General Clauses Ordinance<sup>39</sup> contains a number of provisions dealing with bilingual matters. Section 5 of that Act provides as follows: *'Where any word or expression is defined in any Ordinance, such definition shall extend to the grammatical variations and cognate expressions of such word or expression.'*
83. We also looked at section 33(3) of Canada's Interpretation Act<sup>40</sup> which provides: *'Where a word is defined, other parts of speech and grammatical forms of the same word have corresponding meanings.'*
84. Such provision could be useful, but it would need to apply equally to both languages (even if it is arguably of greater utility in relation to the Welsh language), and it is an area where the absence of such provision in the 1978 Act might lead to issues in practice. For those reasons, we are continuing to consider the merits of provision of this nature.

### Provisions in the Government of Wales Act 2006 which could be brought into an interpretation Act for Wales, with or without modification

85. There are a number of provisions in the Government of Wales Act 2006 relating to the interpretation of National Assembly legislation which could be restated<sup>41</sup> in an interpretation Act for Wales:

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<sup>39</sup> E.R. 1 of 2017.

<sup>40</sup> R.S.C., 1985, c. I-21.

- a) section 154 (interpret legislation narrowly so as within competence),
- b) section 156 (English and Welsh texts), and
- c) section 158 (interpretation of the Government of Wales Act 2006).

86. The provision in section 156(2)<sup>42</sup> could be repealed, and perhaps replaced with something in an interpretation Act for Wales which is more appropriate and useful, such as something about resolving ambiguities generally. As it stands this section focuses on adjusting the Welsh to meet the English, which seems at odds with parity of the languages.

### **Standard form provision**

87. Throughout the law applicable in Wales (and beyond) there are a number of matters that arise with some regularity, across a range of legislation dealing with a variety of subjects. Examples include fixed penalty notices, powers of entry and/or inspection, and the establishment of a statutory body or office. The provision addressing the technical aspects of these matters can be quite complex or lengthy. As they are not addressed in an interpretation Act, or in any other Act which deals with these matters for general purposes, they have to be fully dealt with in legislation each time they arise.

88. Although these matters arise with some frequency, they are not always expressed in precisely the same way in each Act. Sometimes this is because the provisions on, for example, powers to issue fixed penalty notices in one Act are intended to have a different effect from the provisions on fixed penalty notices in another Act. However, there are sometimes variations in the wording even where the legal effect of the words used in one Act is not intended to be different from the legal effect under another Act.

89. One approach to this issue would be to put in place, in an interpretation Act for Wales, sets of provisions which deal with these recurring matters. These sets of provisions would reflect the most common forms of the law on these matters, so that they would be of use in largest number of circumstances. This 'standard form provision' could then be referred to as required by other legislation in which

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<sup>41</sup> We note that, under paragraph 5 in Part 2 of Schedule 7 to the Government of Wales Act 2006, as amended by the Wales Act 2017, an Assembly Act (and so an interpretation Act for Wales) cannot modify sections 154, 156(1) and 158 of the Government of Wales Act 2006.

<sup>42</sup> The Welsh Ministers may by order provide in respect of any Welsh word or phrase that, when it appears in the Welsh text of any Assembly Act or Measure, or any subordinate legislation made under an Assembly Act or Measure, it is to be taken as having the same meaning as the English word or phrase specified in relation to it in the order.

the matter or matters arose, and it would no longer be necessary to set the concepts out afresh each time<sup>43</sup>.

90. Even if the standard form provision in any particular area was not wholly appropriate in a particular case, it would serve as a useful starting point that could be varied as necessary. This would mean that provision in this area would remain consistent where the same effect was wanted, and any variations would be clear, and limited to the extent necessary to achieve the desired outcome.
91. This would, however, expand the scope of an interpretation Act for Wales beyond that of other interpretation Acts. The implications of this would need to be considered. It is also possible that only a very small number of matters would lend themselves to the creation of standard form provision, if any.

**Question 8: What are your views on the other matters that could be dealt with in an interpretation Act for Wales, set out in Chapter 9?**

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<sup>43</sup> This concept already exists in the law in the United Kingdom, to some extent at least. See Part 3 of the Regulatory Enforcement and Sanctions Act 2008, which gives the UK Government a tightly constrained set of powers, which allow for only limited variation, to give a wide range of persons who have regulatory functions the ability to impose civil sanctions in relation to a range of offences across a wide variety of legal areas (health and safety, environmental law, housing, hallmarking and so on). As a consequence, the Act also puts in place provisions which can be drawn on when drawing up new civil sanction regimes.

## Impact assessments

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92. The benefits and impacts for the Welsh language of potential reform are set out in this paper, but questions 9 and 10 in the consultation response seek your views on the effects of the proposed policy.
93. The Welsh Government has undertaken a Children's Rights Impact Assessment for this policy consultation. A copy may be found on the consultation web-page. Any comments on this would be very welcome.
94. If the Welsh Government proceeds with legislation on statutory interpretation at a future time, a Regulatory Impact Assessment on the costs and benefits of the chosen approach will need to be prepared. We do not immediately envisage that a new interpretation Act for Wales would give rise to costs for the public sector or others, but would welcome any views on potential costs or other resource implications, in order that we may investigate these further.
95. This consultation paper asks a number of specific questions. If you have identified any related issues which we have not specifically addressed (including potential impacts that we have not touched upon) the consultation response form provides an opportunity for you to set these out at the end.



## Annex A: Core rules in the Interpretation Act 1978

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<b>Section in the 1978 Act</b>	<b>Nature of provision</b>
4	Timing of when provisions in Acts come into force
6	References to gender (e.g. 'he' or 'she')
6	References to the singular or the plural
7	Service of documents by post
8	Measuring distance
9	References to time of day
10	References to the Sovereign
11	Interpretation of subordinate legislation
12	Exercise by office holders of their statutory powers
13	Exercising power to make subordinate legislation before power is brought into force
14	Power to make subordinate legislation includes power to amend etc. things previously made under that power
14A	Subordinate legislation may make provision about reviewing and/or 'sunsetting', <sup>44</sup>
15	Effect of repealing a repeal
16	Effect of repeal
17	Repeal and re-enactment
18	If something is an offence under two or more Acts, an offender can only be punished once
19	Referring to an Act in another Act
20	References in Acts to specific parts of other legislation
20A	References in legislation to EU instruments

<sup>44</sup> A 'sunset' provision in legislation is a provision which provides that some or all of that legislation ceases to have effect at a certain time.

## **Consultation Response Form**

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Your name:

Organisation (if applicable):

email / telephone number:

Your address:

**Question 1:** Should we insert a reproduction of Schedule 1 to the Interpretation Act 1978 in the Welsh language into that Act, or should we aim to apply an interpretation Act for Wales to as much Welsh language legislation as possible?

**Question 2:** Do you agree with the potential benefits of a Welsh Interpretation Act identified in this consultation paper?

**Question 3:** Which of the potential solutions to the “two-Act issue” would you consider to be most helpful to users of the legislation?

**Question 4:** Do you consider there are any practical issues arising from any of the potential solutions to the two-Act issue?

**Question 5:** What are your views on the potential changes to the ‘core rules’, set out in Chapter 7?

**Question 6:** What are your views on the potential new provisions that could be included in an interpretation Act for Wales, set out in Chapter 8?

**Question 7:** Are there any extra new provisions, to those set out in Chapter 8, that you would wish to include in an interpretation Act for Wales?

**Question 8:** What are your views on the other matters that could be dealt with in an interpretation Act for Wales, set out in Chapter 9?

**Question 9:** We would like to know your views on the effect developing an interpretation Act for Wales could have on the Welsh language, in particular in respect of:

- i) helping people to use Welsh, and
- ii) treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 10:** Please also explain how you believe the proposed interpretation Act for Wales could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less

- ii) favourably than the English language, and  
no adverse effects on opportunities for people to use the Welsh language  
and on treating the Welsh language no less favourably than the English  
language.

**Question 11:** We have asked a number of specific questions. If you have views on any related issues that we have not specifically addressed, please set them out here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: