

This is the response of the Welsh language Liaison Judges to the consultation exercise launched by the Counsel General, Mick Antoniw, into the need for an Interpretation Act for Wales.

General Observations

The Law Commission's report on the form and accessibility of the law applicable in Wales addresses the challenges presented when laws are made into languages which are to be treated for all purposes as of equal standing. It contains key recommendations which should be implemented without delay, including recommendation 24 which states:

"The Welsh government should be formally recognised as being responsible for standardisation of Welsh language legal terminology. An independent multidisciplinary panel should be established to advise the Welsh government on Welsh language legal terminology."

This is a clear, well presented recommendation which should be prioritised, even if there are resource implications. It has the full support of the Welsh Language Liaison Judges who would be pleased to assist by contributing to the work of any independent panel.

The report's recommendation in relation to an Interpretation Act is that the Welsh Government and National Assembly should consider and keep under review the potential benefits of introducing an Interpretation Act of the Assembly. As a first step, it suggests that Schedule 1 of the Interpretation Act 1978 be scrutinised and the terms therein be given statutory Welsh equivalents. Further central definitions, useful to the Welsh legislation, could and should also be included. This process has in fact already commenced under Richard Crowe's leadership. It is being supported by the Welsh language Liaison Judges. It must be right that a Welsh language equivalent to Schedule 1 of the Interpretation Act 1978 should be drafted and implemented come what may. We share the enthusiasm for seeing the Welsh language on Westminster's statute books.

The 1978 Interpretation Act only makes provision for English legal terminology. It predates the 1993 Welsh language Act and the Government of Wales Act 2006. Consequently, it doesn't acknowledge the equal status of English and Welsh as languages of legislation. This is something that could be addressed by amendment of the existing act rather than through a new act. Presumably, post-Brexit, there will need to be further amendments to the 1978 Act and Wales's requirements could be addressed during that process.

We see some strength in the Law Commission's view that centralising every statutory definition of the term in an Interpretation Act would create a piece of legislation that was unwieldy to the point of being unmanageable. Priority should be given at this stage to establishing a Welsh language terminology panel that would allow Welsh legal terminology to evolve.

A scoping exercise is currently underway and has been commissioned by the Lord Chancellor's Advisory Committee on Welsh Language Issues. That has identified that there is no universally recognised translation for fundamental legal concepts such as the paramountcy principle or the overriding objective. Intermediary is incorrectly translated as "mediator". These are fundamental issues that directly impact upon the ability of Welsh speaking practitioners to conduct proceedings in Welsh. Substantive reform that ensures a consistent and common usage of legal terminology in clear Welsh (Cymraeg Clir) would be welcome. The approved

terms could then be found on BydTermCymru and there could be a strategy for increasing awareness about that valuable resource so that it becomes everybody's first port of call and main reference point.

The consultation states that it is "considering whether provision for dealing with issues which arise only in relation to the Welsh language would assist" and in chapter 9 it concludes "we are continuing to consider the merits of provision of this nature." This is the area for reform that should be prioritised. It is disappointing to see that there are no concrete, tangible proposals made. If an independent panel is established, there may be cost implications as it will need to be properly supported. There may be a role for HMCTS' Welsh language and policy unit. It will also need to involve the Welsh Language Commissioner's office and the Public Services Ombudsman's legal advisor. The judiciary's support is assured.

In response to the questions posed:

1) Schedule 1 of the Interpretation Act 1978 should be reproduced in Welsh and inserted into that Act. Any additional words and definitions could also be included in this process. Further amendments could reflect the obligation to treat the Welsh and English languages equally when drafting legislation.

2) The potential benefits of a new act are acknowledged but there is concern about proportionality and whether this will help or hinder access to justice.

3) We do not express a view as to our preferred option. This should be considered by the Association of Welsh Judges.

4) There is a concern that defining terms in a rigid manner will not allow Welsh legal terminology to evolve. The problems we face in Wales would be better addressed by the Welsh government having statutory responsibility for creating and updating a database of Welsh legal terminology. Practitioners rarely refer to Interpretation Acts and having 2 applicable Acts could increase complexity and cause frustration. It may hinder the overall objective of increasing accessibility to Welsh law.

5&6) The potential changes to the core rules and the new provisions under consideration reflect the fact that any piece of legislation which is 40 years old is likely to benefit from an overhaul by a modern, dynamic drafting team. There is no objection in principle, save for the concerns expressed above and the question of what should be afforded priority at this point in time.

7&8) We would like to see responsibility for Welsh legal terminology assumed by the Welsh government, advised and assisted by an independent body which has judicial input and involvement. The analysis of the Law Commission as to the principal objectives of bilingual drafting (see para 11.1 and 11.2 of the final report) should also be embodied in statute.

9) There are few concrete proposals in this consultation that seek to ensure language parity or to promote usage of the Welsh language. We are disappointed that this is the subject of

"further consideration". We await those proposals and refer you to our general observations within this response as to how this might be achieved.

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