

Dumfries House
Dumfries Place
Cardiff
CF10 3ZF

T: +44 (0)29 2023 8239
F: +44 (0)29 2023 7268
33001 Cardiff 1

E: info@geldards.com
W: www.geldards.com

Office of the Legislative Counsel
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Our Ref: HRCW.CH
Your Ref:

Date: 29 August 2017

Direct: 029 2039 1765
Fax: 029 2023 7268
Email: huw.williams@geldards.com

Dear Sirs

Consultation on Interpreting Welsh Legislation

This is a response to the Welsh Government's consultation document "Interpreting Welsh legislation: Considering an interpretation Act for Wales. The authors of this response are Huw Williams and Clare Hardy.

Huw Williams is Lead Partner: Public Law at Geldards LLP, a current Member of the Wales Committee of the Law Society of England and Wales and also a former member of the Planning and Environment Law Committee. He was also member of the Independent Advisory Group on Planning whose report was a major part of the evidence base for the reforms in the Planning (Wales) Act 2015.

Clare Hardy is a Senior Associate: Public Law at Geldards.

The views set out in this response are the authors' personal opinions.

Question 1

We would favour the reproduction of Schedule 1 to the Interpretation Act 1978 in the Welsh Language, to cover legislation which may not be fully bilingual but may contain Welsh terms. We agree with the argument that it will place the Welsh language in a key piece of UK Parliament legislation extending to England and Wales.

We suggest a pragmatic approach to terms e.g. "London Borough" that manifestly do not require a Welsh version and suggest they are simply left without a Welsh equivalent using a formula such as "Welsh version not prescribed".

Question 2

We agree that a separate Interpretation Act for Wales should be enacted to apply to Welsh legislation for the reasons given.

C: 5263336v1

The members of Geldards LLP are solicitors and a list of members' names is available for inspection at the registered office: Dumfries House, Dumfries Place, Cardiff CF10 3ZF
We use the word 'Partner' to refer to a member of the LLP or an employee of an equivalent standing and qualification. Geldards LLP does not accept service of documents by email

Geldards LLP is a limited liability partnership
Registered in England and Wales
Partnership number OC313172
Authorised and regulated
by the Solicitors Regulation Authority

Question 3

We support the use of a sign-post provision in Acts of the National Assembly. If Welsh legislation succeeds in its ambition of being clearer and more accessible, the existence of an Interpretation Act ought to be made clear in each Act to which it applies for the benefit of lay readers. We acknowledge the caution which should be exercised in introducing unnecessary words. However, similar arguments have also been applied to the use of "Overview" sections which have now become an accepted and useful part of Welsh legislation.

Question 4

We favour an approach that appears on the face of the legislation. Signposting the interpretation Act in the Explanatory Memorandum will require the reader to look at that source of information in addition to the text of the Act. The same objection applies to relying on the Law Wales website.

Notwithstanding our response to the previous question, we think there may be a case where Codes are introduced. As these will have a more permanent status than individual Acts, we think there is a case for specifically applying an Interpretation (Wales) Act to each Code by provision in the Code. On this basis there may be an argument for excluding any legislation designated a "Code" from the Interpretation (Wales) Act.

Question 5

We agree that all the potential changes to "core rules" set out in Chapter 7 of the consultation document are ones that could usefully be made.

Question 6

We agree with the proposed new provisions, set out in Chapter 8 of the consultation document, that could be included in an Interpretation Act for Wales.

We especially welcome the powers to combine legislation subject to different procedures into the same statutory instrument. The ability to do this should enable the consolidation of subordinate legislation with benefits of intelligibility and consistency. Currently, schemes of subordinate legislation are driven by the procedural route for making. For example, ten pieces of secondary legislation were required to introduce the new Nationally Significant Development procedure.

Consideration should be given to extending the power to combine to include Directions as well.

We agree with the introduction of a provision along the lines of section 21 of the Interpretation and Legislative Reform (Scotland) Act 2010 but note that the provision also states the form is valid "...unless the difference materially affects the effect of the form or is misleading" and we support retaining this formulation.

Question 7

We suggest consideration is given to a general provision that where an enactment confers a function on a person or body they shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of such function.

Question 8

We have no further comments on other matters that could be dealt with in an Interpretation Act for Wales.

Question 9

We believe that the incorporation of a translation of Schedule 1 to the 1978 Act, together with an Interpretation (Wales) Act will encourage the development of standardised Welsh legal terms and will offer further, albeit subtle and perhaps modest, encouragement to the greater use of Welsh in everyday legal discourse and in transactions and proceedings.

Question 10

Please see our reply to the previous question.

Question 11

We have no further observations on related issues that were not specifically addressed in the consultation document.

Yours faithfully



Huw Williams
Partner
Geldards LLP

