

Interpreting Welsh law: an interpretation act for Wales

Q1. Q1: 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?

Aim to apply an interpretation Act for Wales to as much Welsh language legislation as possible.

Q2. Q2: Do you agree with the potential benefits of a Welsh Interpretation Act identified in this consultation paper?

Yes

Q3. Comments

The importance of flagging interpretation Acts to users, including lawyers, should not be underestimated. If you go for either of the options in Q3 for mentioning the Interpretation Act on the face of each piece of Welsh legislation, that in itself will be a huge benefit of having a Welsh Interpretation Act. In my experience students in law schools are not taught about interpretation Acts (courses focus on case-law on statutory interpretation instead), and many lawyers and other practitioners are unaware of the key interpretation provisions. The main problem with an Interpretation Act is that its benefits turn into disbenefits if the readers of other Acts are unaware of its existence and importance.

Q4. Q3: Which of the potential solutions to the "two-Act issue" would you consider to be most helpful to users of the legislation?

I would see c) as most useful - it means you will have an express pointer on the face of each piece of Welsh legislation. It will avoid the problem of signpost provisions and it leaves you some flexibility to do something different in appropriate cases. This option also can be backed up by references in the Explanatory Note and on the website, but those are not enough on their own. In para 76 to 78 you talk about new technology making cross-references easier to use, but you appear to worry about having to implement particular technological fixes and burden website editors. I think you should not be put off in that way - the point about the new technology is that users are now savvy about surfing the web, so you do not need to worry about having to hyper-link cross-references. If the user has managed to find the text of the Welsh Act that they wanted, and then sees a ref to the Welsh Interpretation Act, then they will be capable of finding their way to that Act too in the same manner, without hyper-links or notes in margins or anything else that needs burden a web manager. The key is that your legislation is rationally organised and is easy to find on your website.

Q5. Q4: Do you consider there are any practical issues arising from any of the potential solutions to the two-Act issue?

There is bound to be a nervousness about the risk of accidentally missing out the express provision in a particular piece of legislation. But the drafting of legislation is now far more professional than it used to be, and no drafter forgets to include the short title or commencement provision these days. It also fits with the ideas in the 2 reports mentioned on making Welsh law - you should assume there will be a discipline in ensuring drafts contain what they need, alongside the discipline you will need in ensuring they take their proper place in a coherent statute book (by amending existing legislation in the right part of a Code, and so on). You have an opportunity to try something bold, and you should not shy away from it.

Q6. Q5: What are your views on the potential changes to the 'core rules', set out in Chapter 7?

I agree with all of these changes.

Q7. Q6. What are your views on the potential new provisions that could be included in an interpretation Act for Wales, set out in Chapter 8?

I agree with all of these changes, but I think the power to fill in past dates (in your example it should surely be to "2nd January" though, rather than "the day after 1st January") and the power to correct errors should be dealt with separately as part of the wider approach taken as a result of the 2 reports on making law. They should be part of ensuring that you have a disciplined and updated statute book - that needs tackling in full, and you should beware of taking the steam out of it by salami slicing parts into other legislation like this.

Q8. Q7: 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?

I would invite you to consider Jersey's version as well - the Interpretation (Jersey) Law 1954 at <https://www.jerseylaw.je/laws/revised/Pages/15.360.aspx> . I am writing in a personal capacity, and I would not recommend everything in our Law. But you might consider Article 13, which allows us to express penalties more succinctly (and I would wonder whether you might be able to provide that penalties above the Mags limit are only applicable on indictment, with summary penalties limited to the Mags max, to cut out a great deal of verbiage). Also see notes on Article 2(c) (grammatical variations) in next answer. I would also invite you to look at our system of revised editions under the Law Revision (Jersey) Law 2003 <https://www.jerseylaw.je/laws/revised/Pages/15.420.aspx> (and the notes on that website about moving to instant consolidation instead of annual), which bears on your wider interest in having a disciplined statute book. The changes to the interpretation provisions should form part of a coherent whole with your moves in that direction.

Q9. Q8: What are your views on the other matters that could be dealt with in an interpretation Act for Wales, set out in Chapter 9?

I agree with all of these proposals. But in particular I do believe you should go ahead with the provision on grammatical variations irrespective of whether it delivers benefits in the Welsh language as well - its benefits for the English language version are very significant too. In Jersey we have Article 2(c) of the Interpretation (Jersey) Law 1954 (see Q7), which is very useful. When it comes to differences from the UK Act, you just need to bite the bullet, and rely on having express pointers in your legislation back to your new Welsh Interpretation Act. Add to pressure on the UK to improve their Act, sooner than hobble yourselves by feeling you have to limit yourselves by matching their inadequacies. Standard form provision is a good idea - it may have gone out of fashion in the UK since the Towns Police/Improvement Clauses Acts, but it is worth reviving. The question is whether it is best housed in the Interpretation Act or in separate Acts - it might be better to have separate standard clauses Acts (which could make different provision, appropriate for the subject, for how they can be updated and what is the effect on existing legislation), the point being that other legislation that relies on those clauses will make express reference back to the appropriate standard clauses Acts.

Q10. Q9: 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?

I am not a Welsh speaker or a resident of Wales (though I have Welsh-speaking relatives and some of Jersey's legislation is in French), so I have no standing on this question. But from the outside it certainly does look wrong to say the two languages have equal status but then only have an Interpretation Act in English.

Q11. Q10: 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 favourably than the English language, and ii) 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.

See Q9.

Q12. Q11: 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:

As mentioned above, I do think it is important to keep this initiative tied in to the wider moves you are taking on the form and accessibility of Welsh legislation - they are interdependent for their effectiveness.

I should also emphasise that, although I am one of the legislative drafters for the Jersey government, I am writing this entirely in my personal capacity, and nothing I say should be taken as being a view held by my office or by the States of Jersey.

Page 2: Submit your response

Q13. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name Matthew Waddington

Organisation (if applicable) -

Q14. If you want to receive a receipt of your response, please provide an email address.
Email address

No Response

Q15. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response