

Interpreting Welsh law: an interpretation act for Wales

Consultation response form

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Responses should be returned by 11/09/17 to:

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or completed electronically and sent to:

e-mail: LegislativeCounsel@wales.gsi.gov.uk

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?

We can see that the two-Act issue could cause problems in understanding where to turn for guidance. We think it would be preferable to have a clear logical divide as to:

- which legislation the Interpretation Act 1978 applies and
- which legislation any new Interpretation Act applies to.

For this reason we would prefer that Schedule 1 were reproduced in Welsh and added to the 1978 Act, which would then continue to apply to any UK Parliament Acts that apply in Wales, rather than aiming to apply any new Interpretation Act as widely as possible.

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

We accept that the points raised could provide benefit but consider it will need care not to create unintended conflicts with or change of meaning from the 1978 Act.

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

Given the identified risk of accidentally omitting information as to which Act should be relied upon, we cannot support option C that any Interpretation Act for Wales will only apply to Acts which expressly apply it. This may not be a reliable way of ensuring that all Acts of the National Assembly and all subordinate legislation be supported by a Welsh Interpretation Act when that was implicitly intended. Each piece of legislation should state which Interpretation Act applies to it.

In considering options A and B it could be of most benefit to provide the information in both sections given that it may only require one sentence to do so and therefore should not be overly expensive or inconvenient. These approaches do place a considerable onus on those preparing legislation to include reference to the correct Interpretation Act.

D appears supplementary to whichever route is taken.

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

Option D would provide a nice complement to the use of options A and B but should not be relied upon as the sole solution to the two-Act issue. To do so would assume that the users of legislation are aware of the two-Act issue, this would be an unrealistic expectation of many users.

We believe a statement providing the name of the relevant Interpretation Act should be made in every Act if users are expected to refer to it.

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

In relation to the point on Section 6(a) and (b) we believe that existing legislation provides a succinct way of ensuring the masculine includes the feminine and vice versa which should cover grammatical gender issues in the Welsh Language. We do not believe inclusion of sections 6(a) and (b) would in any way preclude

continuation of gender-neutral drafting but would instead act as a backstop to ensure understanding for any cases where gender neutrality cannot be achieved.

Updating section 7 to include electronic service of notices as well as written service via post would need to be publicised. In property matters usual practice is to serve notices, for example notices to quit or to do works, in writing via post. There should be a test that service was effected – not just that a notice was issued. We understand that, in relation to agricultural tenancies legislation, the provisions for service of written notices would remain because they are on the face of the Acts.

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?

We have no objection to the proposals raised. However, the provision for the correction of obvious errors in legislation should be very tightly drawn.

We would be grateful for clear guidance on matters relating to electronic communication for giving notice, as identified under the miscellaneous sub heading.

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?

Care may be needed where there are cross-border powers as may arise where boundaries derive from former Water Authorities.

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?

Please see our response to question 5 for our views on gender neutrality provisions.

More generally there appears merit in recognising other grammatical forms of the same word.

On the matter of drafting standard form provisions for inclusion in any Interpretation Act for Wales, we question whether this would be of significant benefit, particularly given the identified point that “it is also possible that only a very small number of matters would lend themselves to the creation of standard form provision, if any”.

Given that each Act would then also be likely to require variations to the standard from, users would be required to read both the adjustments detailed in the Act and standard provision in the Interpretation Act for Wales and understand the changes made and any implications of those changes. We believe it would be of greater benefit to users to have the required information stated in full within the Act for ease of use. It might also, on occasion, complicate drafting where difference is intended.

Having said this we understand that consistency in provisions where there is overlap can be beneficial. This could be provided by promoting the use, following appropriate adjustment, of standard wording which could be provided in guidance for drafting Acts.

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?

We can see that developing an Interpretation Act for Wales and publishing it in English and Welsh will enable those who would prefer to read Welsh to do so without the need to refer back to English versions which has been necessary in the past as Welsh translations of the Interpretation Act 1978 have not held legal weight.

We see that adding a reproduction of Schedule 1 to the Interpretation Act 1978 in Welsh will aid the equal treatment of Welsh and English languages.

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.

We have no comments to make.

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:

We have no further comments to make.

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:

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