

## Interpreting Welsh law: an interpretation act for Wales

Consultation response form

Your name:

Organisation (if applicable):

e-mail/telephone number:

Your address:

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

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

or completed electronically and sent to:

e-mail: [LegislativeCounsel@wales.gsi.gov.uk](mailto: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 would welcome clarification concerning reasoning given in para. 54. Is it the case that a Welsh translation of Schedule 1 to the 1978 Act would govern how Westminster legislation on non-devolved matters would be read and understood? If so, this is a good idea as it provides for many areas where the Welsh language matters, e.g. the criminal justice system, prisons. We also believe that placing the Welsh language in UK Parliament legislation on interpretation would provide an important and timely reminder to Parliament and non-devolved institutions such as broadcasters of the status of Welsh as an official language in Wales and of public bodies' duty to uphold this. Finally, we agree that a direct translation of Schedule 1 is what is needed.

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

We agree that a new Interpretation Act for Wales governing Acts of the Assembly and subordinate legislation made under those Acts is needed in the Welsh language. However, we note that the consultation document has not provided any indication as to what 'new and potentially innovative provision' in the new Act would be. Simply because a new Act is proposed does not mean that it needs to go beyond the standard provisions. It has to be said that grounds c-g for a new Act are not very strong compared to grounds a-b. These are things that involve mere clarification rather than legal or political reasons for a new Act.

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

We believe that 67(a), Using explanatory notes, is the most helpful as it is the simplest. It should not be difficult to ensure that users of the Act don't miss the explanatory notes, especially if using online publication.

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

The signpost provision sounds complicated and confusing for users.

Solution c) would only create more unnecessary work for the National Assembly and thus needs to be avoided.

Using the Cyfraith Cymru/Law Wales website looks like a good alternative to Explanatory Notes. However this has the disadvantage of requiring users to go to another website, whereas Explanatory Notes for legislation usually accompany it on the same web page.

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

The problem with 'gender-neutral drafting' is that this is modelled on the English language, which has no grammatical gender, unlike Welsh and indeed most European languages. It is worth considering that the Welsh language unlike English distinguishes clearly between grammatical gender and 'gender' in the social and legal sense (itself a slippery and subjective concept). It is noticeable how Welsh language versions of Welsh Assembly legislation before the passing of the Equality Act (2010) use the term 'rhyw' (sex) where the English used 'gender'. This shows that translators or drafters quite rightly sought to use plain, objective terminology and to safeguard the equal status of the Welsh language in legislation. The use of the term 'rhywedd' (social gender) and even 'gender' instead of 'rhyw' (sex) in Welsh language versions of some pieces of legislation is problematic given that sex is a protected characteristic under the Equality Act 2010, distinct from gender reassignment, and also protected under the Human Rights Act 1998. The term 'gender' itself has been used to neuter or erase 'sex' from some legislation. This problem has practical applications.

It is difficult see why Section 8 (distance) should be omitted. It is not clear why references to the Sovereign (Section 10) are unnecessary. Citing the Scottish Interpretation Act does not constitute a reason in and of itself.

Section 13 is unclear.

We do not see why Section 15 should be extended, especially as the Consultation document has not discussed arguments for and against preventing the revival of rules in the common law. Such an extension could be considered an overreach of statutory law as against the common law system and the judiciary. Arguably this would give too much power to politicians. In the absence of a Welsh judiciary we consider this to be a serious problem.

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?

These potential new provisions for powers seem reasonable, however they are not illustrated by specific examples which would make it easier for non-lawyers to assess their validity.

We would like to know whether the list of definitions is exhaustive, and whether it would only include NHS terminology or also terminology for Education and other devolved areas. The challenge here is that an Interpretation Act for Wales would

become quite a lot longer than typical Interpretation Acts.

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?

The problem here is that the consultation asks whether or not we wish to see specific extra new provisions without specifying the principles involved. As in our answer to Question 6, we see a problem here with definitions

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?

As in our answer to Question 5, we consider the matter of consistent applications of definitions arising as a result of mutations and gender important, but we do not think that variations in terminology should be ignored as they are implicated.

We would appreciate knowing what the Welsh Government wants to see regarding the application of the common law and common law concepts.

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?

In line with our previous comments, we agree with the view stated in section 86 namely that the focus on adjusting the Welsh to meet the English is entirely inappropriate. Thus we agree with the idea that section 156(2) should be repealed.

As Interpretation Acts in different jurisdictions are rather general in their coverage, it is difficult to see why the points in paragraph 87 are valid. The Interpretation Act risks losing credibility if it is too different from the 1978 Act or even Scottish and Northern Irish Acts in scope.

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.

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 agree with the general principles and recommendations of the Law Commission report behind this consultation.

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:

