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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Interpreting Welsh Legislation

Considering an interpretation Act for Wales

December 2017 (version 2)

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This document provides a summary of the responses received by the Welsh Government to the consultation on *Interpreting Welsh legislation – considering an interpretation Act for Wales*.

Audience

Legislators, legal professionals, the judiciary, representative bodies, public sector bodies, interest groups, the voluntary sector, and individuals with an interest in the accessibility and statutory interpretation of Welsh law.

Action Required

For information only

Further Information

Enquires about this document should be directed to:

Office of the Legislative Counsel

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Email: LegislativeCounsel@gov.wales

Telephone: 0300 025 0375

Additional Copies

This document can be accessed from the Welsh Government website at:

<https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales>

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Chapter 1 – Introduction

1. Interpretation Acts are used to shorten and simplify legislation. They clarify the effect of statute law by establishing rules of construction, and shorten laws by adopting standardised provisions (for example definitions of commonly used words and terms) that do not then need to be repeated. At present all of the law applying in Wales is interpreted by reference to an Act of the UK Parliament, the Interpretation Act 1978 (the 1978 Act).
2. On 19 June 2017 *Interpreting Welsh legislation – considering an interpretation Act for Wales* was published¹ for public consultation on the Welsh Government website. The consultation period lasted 12 weeks and closed on 11 September 2017.

Proposals

3. The consultation considered whether the Welsh Government should develop a new interpretation Act for Wales or amend the 1978 Act by reproducing Schedule 1 to that Act in Welsh. If there were to be a new Act, the policy consultation also sought views on what should be included in it.

Consultation responses

4. As well as being published on the Welsh Government website, the consultation was emailed to stakeholders with direct interest in the accessibility and statutory interpretation of the law applying in Wales, with regular alert emails sent to stakeholders during the consultation period. The Welsh Government web pages received just over 1,100 views, including 106 to the Welsh language version.
5. A total of 17 written responses were received from stakeholders. The responses came from individuals and organisations representing different sectors from across Wales and the UK.
6. Respondents were able to submit their views and comments on paper or online, in either Welsh or English.
7. We are grateful to everyone who responded to our consultation proposals. The responses represent an invaluable source of views, information and ideas which will inform the development of legislative proposals and the wider programme of improvements to the accessibility of Welsh law.

¹ <https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales>

8. A summary of the responses to each question is provided below. A list of respondents to the consultation is provided at Annex A. The individual consultation responses are available on the Welsh Government website: <https://consultations.gov.wales/consultations/interpreting-welsh-law-interpretation-act-wales>
9. The majority of respondents answered each question. Some also provided additional comments, which have been analysed and noted.
10. All respondents were invited to request anonymity, and two respondents decided to utilise this option and therefore their identities have been anonymised throughout this document.

Chapter 2 – Summary of key themes

11. The following key themes emerged from the consultation responses.

Support for the principle of adopting bespoke, bilingual, interpretation provisions for Wales

12. Respondents were, in general, supportive of the proposal set out in the consultation to make bespoke, bilingual provision about the interpretation of Welsh legislation.

Acknowledgment of “two-Act issue” and the need to minimise complexity created by this

13. Having a new Act making provision for statutory interpretation of Welsh law does not mean that the 1978 Act would no longer apply in relation to legislation affecting Wales. Some respondents were concerned about the confusion the existence of two interpretation Acts could create for users of legislation, and were of the view that any complexity should be minimised.

Knowing which interpretation Act applies

14. There were a range of views on how to make it clear to a reader of legislation whether the 1978 Act or the new Act would apply. However, there was no clear preference.

Risk of departing too far from the 1978 Act

15. Some respondents were keen to see innovation, and most expressed support for modernising the rules in the 1978 Act in a new Act for Wales. However, respondents also raised concern about deviating too far from the existing arrangements.

Preference for resolving the issue on a UK or England and Wales level

16. A number of respondents were very pleased that the Welsh Government is considering modernising the rules on statutory interpretation for Wales, but a few considered that the opportunity should be taken by the UK Government (or perhaps jointly between Governments) to either modernise the 1978 Act for England and Wales, or modernise all of the interpretation Acts operating in the UK.

Dealing with the absence of definitions of words and expressions in the Welsh language in the 1978 Act

17. Most, if not all, respondents recognised that there is a problem with Schedule 1 to the 1978 Act (the Schedule of defined words and expressions) being only in the English language and supported tackling this problem.

Standardisation of Welsh language terms

18. A number of respondents called for the Welsh Government to become responsible for the standardising Welsh language terminology.

Welsh language and gender

19. Respondents recognised that the current rule on gender in the 1978 Act does not reflect the existence of feminine and masculine nouns in the Welsh language and a number called for this to be dealt with in any new legislation. Some respondents also considered that other grammatical matters (for example mutations) could be dealt with by a new Act.

Electronic communication

20. Of the respondents who offered a view on how the rule in the 1978 Act on service of documents should be dealt with, most, if not, all supported the idea of including electronic communication.

Chapter 3 – Summary of responses by question

Proposals for reform

21. The consultation explored options for reforming the law relating to the interpretation of legislation applying in Wales. This part of the consultation summary sets out the responses to the questions concerning the two options for reform:
- a. amending the 1978 Act; and
 - b. creating a new interpretation Act for Wales.

Question 1: 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?

22. Of the 15 responses to this question, the majority were of the view that the Act governing the interpretation of Welsh law should be available in both the English and Welsh language and should provide for the statutory interpretation of Welsh language terms.
23. Four of the respondents were in favour of reproducing Schedule 1 to the 1978 Act in the Welsh language and inserting it into the 1978 Act. Respondents noted that this solution would raise the profile of the Welsh language by placing it in a key piece of UK Parliament legislation.
24. However, there were differing views on what should be included in the Schedule. Huw Williams and Clare Hardy (of Geldards) suggested that terms not relevant to the Welsh context, such as “*London Borough*”, should be left out, and some respondents suggested that the process of translating Schedule 1 to the 1978 Act could go further and include translation of additional words and definitions. The Welsh Language Commissioner commented, however, that all terms (even those which appear unnecessary in the Welsh context) should be included in the Schedule to assist Welsh speakers who wish to refer to English law.
25. Four respondents preferred having a new Act for Wales. The Learned Society of Wales was of the view that since the purpose of an interpretation Act is to assist in statutory interpretation, and so, in turn, assist the reader to understand the intention of the legislature “*it would be incongruous to insert into [the 1978*

Act, an Act of the UK Parliament] a schedule concerning the intentions of a different legislature”.

26. Dr Catrin Fflur Huws was, however, of the view that the starting point was to amend the 1978 Act at a UK level. The Act would then provide for the statutory interpretation of all UK legislation but with separate chapters for Wales, Northern Ireland and Scotland.
27. In response to question 1, a number of respondents raised concerns about the two interpretation Acts applying to Welsh law leading to potential confusion and added complexity – this is dealt with in relation to questions 3 and 4 below.

Question 2: Do you agree with the potential benefits of a Welsh Interpretation Act identified in this consultation paper?

28. Of the 12 responses to this question all agreed that there were some benefits to having a specific new Act for Wales. Three respondents simply responded “yes” to the question without further comment.
29. Of those who provided substantive comments, they noted the following key benefits of having a separate Act for Wales:
 - a. it would be available in the Welsh language which would assist in the accessibility of the law through the medium of Welsh;
 - b. it would align with the Welsh Government’s preferred approach of avoiding placing Assembly legislative provision in pre-existing UK Parliament Acts (where the provision would appear in English only);
 - c. it would ensure equal status of both the English and Welsh language in line with the requirements of section 156(1) of the Government of Wales Act 2006 (whereas inserting a Welsh language version of Schedule 1 into the 1978 Act, originally enacted in English, could weaken the status of the Welsh language text);
 - d. it would improve accessibility, for example by reducing the length of legislation governed by it, and allow for a more user friendly approach to supporting the principle of Plain English/Cymraeg Clir (improving accessibility was seen as important particularly at a time where legal aid funding has been reduced); and

- e. it would provide an opportunity to innovate and create an accessible and modern Act which would go further than the 1978 Act to better serve the needs of Wales and the Welsh language.
30. Respondents noted the following concerns about having a separate Act for Wales which included provision for statutory interpretation:
- a. one respondent was concerned about the potential complexity which could arise from the need to use two separate Acts, while the Association of HM District Judges were of the view that clarity about which Act applies to a piece of legislation would be essential;
 - b. whilst accepting the benefits outlined in the consultation paper, the Central Association of Agricultural Valuers were of the view that care ought to be taken to ensure that the new Act did not create unintended conflicts with, or changes of meaning from, the 1978 Act;
 - c. the Welsh Language Liaison Judges were concerned about the effect of changes from the 1978 Act on access to justice; and
 - d. one respondent was of the view that a separate Act for Wales did not need to go beyond the standard provisions of the 1978 Act.

The ‘two-Act’ issue

31. The consultation proposed that a new Act for Wales would apply to Acts of the National Assembly and subordinate legislation made under those Acts, and potentially subordinate legislation made by the Welsh Ministers under Acts of the UK Parliament. But the 1978 Act would continue to apply to all Acts of the UK Parliament, including those applying Wales. There would therefore be two Acts operating on the legislation applying in Wales.
32. The consultation sought views on the practical issues arising from this and potential solutions to the impacts.

Question 3: Which of the potential solutions to the “two-Act issue” would you consider to be most helpful to users of the legislation?

Question 4: Do you consider there are any practical issues arising from any of the potential solutions to the two-Act issue?

33. Of those who responded to these questions the majority considered there would be risks in having two interpretation Acts applying to legislation in Wales.

34. A number of the respondents commented that since practitioners rarely referred to interpretation Acts, or already applied the law incorrectly, the existence of two Acts could increase complexity and create more issues. The Welsh Language Liaison Judges' response noted this might hinder the overarching objective of increasing accessibility to Welsh law.
35. The Welsh Lawyers in Local Government were of the view that the proposed solutions to address the issues arising from the existence of two Acts carried practical difficulties and inherent risks for the interpretation of legislation, particularly amended UK Parliament legislation and secondary legislation made by the Welsh Ministers under UK Parliament primary legislation. Another respondent agreed that the suggested solutions in the consultation carried practical issues, commenting that a comprehensive body of codified Welsh law was required.
36. Other concerns included that there could be a danger, particularly outside of Wales, of the assumption being made that the two interpretation Acts are the same, and so the new Act could, and would, be ignored.
37. There was, however, also a view that the Government had *"an opportunity to try something bold, and should not shy away from it."* (Matthew Waddington)
38. There were a variety of views on the potential problems to the "two-Act" issues:
 - a. a number of respondents commented that there was a need for clarity about which interpretation Act applied and that this could be achieved by including a provision in each piece of legislation stating which interpretation Act applies. The Learned Society of Wales considered that reversing the normal means of application of an interpretation Act (i.e. directly applying the Act in each subsequent piece of legislation) would not pose practical difficulties. However, some respondents were concerned about including provisions stating which interpretation Act applies as such provisions could be complicated and confusing for users;
 - b. a number of respondents provided views on the usefulness of non-legislative material in resolving the "two-Act" issue. One respondent thought that using the Cyfraith Cymru/Law Wales website could be an alternative to Explanatory Notes. The Central Association of Agricultural Valuers commented that using the Cyfraith Cymru/Law Wales website would complement explanatory notes and signposting provisions, but could not solely be relied upon. However, some respondents did not consider it satisfactory to require the reader to look to other materials outside the legislation to make it clear which Act applied (for example the Explanatory

Memorandum or Explanatory Notes to an Act, or to the Cyfraith Cymru/Law Wales website).

Changes to the ‘core rules’

39. The consultation paper set out some of the potential changes that could be made to the ‘core rules’ of the 1978 Act if reproduced in a new Act for Wales.

Question 5: What are your views on the potential changes to the ‘core rules’, as set out in Chapter 7?

40. 12 respondents provided comments relevant to this question, many of which supported the proposed changes.
41. A significant number of respondents provided views on a rule about references to gender. Some respondents thought that the rule on gender should be retained to ensure gender neutral drafting continues. Other respondents considered it could be a useful rule as conveying obligations in a gender neutral way in the Welsh language is more difficult than it is in the English language. Respondents also noted that the rule would have to take account of grammatical gender in the Welsh language. Additionally, respondents noted that consideration should be given to other grammatical and syntactical matters in the Welsh language, not only gender.
42. Other views on possible changes to the core rules included:
- a. support for not repeating rules which are irrelevant to Welsh law or anachronistic;
 - b. support for retaining and updating the rule on service of documents, particularly updating it to cover electronic communications and possibly to deal with when service is effected;
 - c. one respondent wished to see the rule on distance preserved, and considered section 13 of the 1978 Act (which deals with anticipatory exercise of powers) to be unclear.
43. A handful of respondents to this question expressed a wish to see the core rules of the 1978 Act itself modernised and updated.

Potential new provisions

44. The consultation paper proposed potential new provisions which could be included in a new Act governing statutory interpretation of Welsh law. Respondents were asked for their views on these and whether there were any additional provisions which could be included in the new Act.

Question 6: What are your views on the potential new provisions that could be included in an interpretation Act for Wales, set out in Chapter 8?

Question 7: Are there any extra new provisions, to those set out in Chapter 8, that you would wish to include in an interpretation Act?

45. In total, 11 respondents answered these questions. The majority of respondents responded in a general manner to the questions, rather than providing their views on each of the proposals.
46. Respondents were generally supportive of the proposals. Respondents agreed that there was a need to update the interpretation rules in the 1978 Act generally, as well as tailoring them to resolve issues of interpretation of Welsh law. One respondent commented that although the provisions were a “*genuine attempt at resolving the issues around the interpretation of Welsh legislation*”, the provisions did not go far enough.
47. Some respondents, although agreeing in principle with the proposals, noted that it would only be in the detail of any draft legislation that the proposals could be fully understood.
48. Where respondents expressed a view on individual proposals, the views were mixed:
- a. *powers to make legislation which are subject to different procedures may be combined in the same statutory instrument* – some respondents, including Huw Williams and Clare Hardy (Geldards), welcomed this proposal as it would enable the consolidation of subordinate legislation. However, the Learned Society of Wales was concerned that the proposal could reduce clarity for the legislature and could cause confusion for an end user who may wish to challenge an instrument;
 - b. *power to correct obvious errors in legislation* – there were mixed views on this proposal. Some respondents were of the view that this was not an appropriate proposal for an interpretation Act as it confers a power to amend primary legislation. Another respondent considered that this should not be

dealt with in an interpretation Act but rather separately as part of the wider objective of improving accessibility. However, the Welsh Language Commissioner thought that this power is particularly necessary in a bilingual context to avoid anomalies and inconsistencies between the English language and Welsh language versions of the text. The Central Association of Agricultural Valuers was wary of the proposal, commenting that the provision should be very tightly drafted;

- c. *power to amend Acts to replace a reference to a date on which an event occurs with the actual date on which that event occurred* – respondents did not support this proposal, again noting that this was not appropriate for an interpretation Act as it confers a power to amend primary legislation.
- d. *electronic communication* – respondents welcomed this proposal. The Welsh Language Commissioner “*strongly*” agreed with the proposal, commenting that, a new Act for Wales “*needs to reflect developments in technology and the way that people now correspond in practice*”;
- e. *additional rules that could be included in the new Act* – Dr Catrin Fflur Huws suggested that it would also be possible to include interpretative rules about the discrepancies between the Welsh language and English language version of the texts. Another respondent suggested a general provision could be included such that where an enactment confers a function, that function includes a power to do anything which facilitates, or is conducive or incidental to, the discharge of the function. Matthew Waddington invited consideration of Jersey’s Interpretation Act.

Other matters which could be addressed in a new Act for Wales

- 49. The consultation raised three other matters which could be dealt with in a new Act for Wales:
 - a. Welsh language matters – the consultation paper considered whether it would be beneficial to include in the new Act provision for dealing with particular issues which arise only in relation to the Welsh language (for example variations in terminology arising as a result of mutations or gender);
 - b. provisions in the Government of Wales Act 2006 which could be brought into a separate Act for Wales with or without modification; and
 - c. ‘standard form’ provision – this proposal suggested including in a new Act for Wales ‘sets’ of provisions which occur with some regularity across legislation, for example, fixed penalty notices, or the establishment of a statutory body or office.

Question 8: What are your views on the other matters that could be dealt with in an interpretation Act for Wales, set out in Chapter 9?

50. Of the 14 respondents to this question there was varied support for the proposals.
51. The Welsh Language Commissioner commented that provision should be considered in relation to the grammatical rules and characteristics of the Welsh language. One respondent commented that a provision on grammatical variations would benefit both the Welsh language and the English language.
52. A number of respondents were of the view that the Welsh Government should be responsible for the standardisation of Welsh language terminology.
53. Some respondents commented more generally on the relationship between the English language text and the Welsh language text, and that consideration should be given to how to resolve discrepancies between the two.
54. The Welsh Language Commissioner suggested that a new Act for Wales offered an opportunity to reconsider section 156(2) of the Government of Wales Act 2006. One respondent considered that section 156(2) should be repealed.
55. There was only very limited support amongst respondents for including '*standard form*' provision. Respondents, including The Learned Society of Wales, questioned the appropriateness of such provision in an interpretation Act rather than in separate stand alone Act. Respondents also questioned the implications for appropriate legislative scrutiny and queried whether the proposal went beyond the legislative competence of the Assembly. One respondent suggested that it would be more beneficial and provide greater clarity for the reader if the relevant provisions were set out in each piece of legislation. However, from the perspective of developing bilingual legislation the Welsh Language Commissioner considered that standard form provisions dealing with routine matters could be advantageous as it would reduce translation and proofreading costs.

Effect on the Welsh language

56. Questions 9 and 10 asked respondents' for their views on the effects a new Act governing the statutory interpretation of Welsh law could have on the Welsh language. In particular these questions asked for respondents' views on the effect a new Act could have on helping people to use the Welsh language and ensuring the Welsh language is treated no less favourably than the English.

Respondents were also asked for their views on how the new Act could be formulated so as to have a positive effect on the Welsh language.

Question 9: 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?

Question 10: 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.***

57. Overall, respondents considered that the effects of a separate Act for Wales would be wholly positive in helping people to use the Welsh language and ensuring that the Welsh language is treated no less favourably than the English language.

58. Respondents noted the following key positive effects of having a separate Act for Wales:

- a. it would address the problem that bilingual Welsh law is subject to an English language only interpretation Act (the 1978 Act);
- b. it would help people to use the Welsh language texts of Welsh law as they would not need to cross-refer to the English language text to be able to apply the 1978 Act;

- c. it would assist Welsh speakers to pursue legal remedies in their chosen language and ensures people who wish to use the Welsh language are not at a disadvantage;
- d. it would highlight the status of the Welsh language as a language of law; and
- e. it would encourage the development of standardised Welsh language within the legal profession.

59. However, some respondents raised the following concerns:

- a. the risk of possible misinterpretation or misuse of terms when they are translated, with one respondent commenting that the effect of the proposals may be a general increased need for translators and Welsh speaking lawyers; and
- b. Cardiff Third Sector Council did not see that a new Act for Wales would help the general public to use Welsh, although it would likely strengthen the use of the language in the legal field.

60. Respondents also provided their views on how the positive effects of a separate Act for Wales on the Welsh language could be ensured or increased. One respondent commented that promotion of the existence of a specific interpretation Act for Wales was important as the new Act is not merely a tool for the legal profession but should be an aid to individual citizens in their understanding of the law governing their lives.

Other issues raised by respondents

61. Question 11 sought any additional comments from respondents which had not been specifically addressed/captured elsewhere in their written responses.

Question 11: 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:

62. Eight respondents responded to this question and they provided a range of comments.

Accessibility of Welsh Law

63. A number of respondents offered views on the accessibility of Welsh law.

64. The Law Society and other respondents referred to the Law Commission's report on the *Form and Accessibility of the Law Applicable in Wales* and welcomed the positive steps being taken by the Welsh Government to set the framework for accessible, well drafted and workable Welsh law in both the English and Welsh languages. The Welsh Language Commissioner also supported a long term programme of consolidating and codifying the law in Wales.
65. Similarly, a number of respondents considered the development of a separate Act for Wales to be an integral part of the Welsh Government's wider programme on improving accessibility of Welsh law. Matthew Waddington commented that the programme and the development of such an Act are "*interdependent for their effectiveness*".
66. The Learned Society of Wales noted that the creation of Codes of Welsh Law would serve as an opportunity to further test the concept of Welsh interpretation provisions, given that each Code is likely to have its own interpretation provisions.
67. The Learned Society of Wales also suggested there was an opportunity to change the way in which legislation is prepared and published and improve the accessibility of Welsh law. Others shared this view.

The Welsh language

68. Some respondents took the opportunity to raise issues regarding the Welsh language. A number of respondents mentioned standardisation of Welsh language legal terminology as something for the Welsh Government to consider, and respondents also called for the Welsh Government to prioritise reform to ensure provision for dealing with issues which arise only in relation Welsh language.

Additional comments

69. Other comments made by respondents included:
 - a. *Cross border issues*: HM Land Registry raised concerns about the potential risk of unintended consequences or effects on existing or future legislation, particularly if new provisions were to apply retrospectively. Specifically, HM Land Registry highlighted the need to recognise the impact of any interpretation Act on cross border matters and the importance of providing legal certainty, particularly with regard to clarity and uniformity of provision applying in both England and Wales; and

- b. *European Union*: William Robinson invited the Welsh Government to consider the approach to interpretation of European Union law, as its institutions operate in more than one language.

Annex A – List of respondents

Name of respondent	Name of organisation
Dr Catrin Fflur Huws	Ysgol y Gyfraith, Prifysgol Aberystwyth
Daniel Greenberg	-
Huw Williams, Partner, Geldards LLP Clare Hardy Senior Associate, Geldards LLP	-
-	Public Services Ombudsman for Wales
Gareth Owens	Lawyers in Local Government - Wales Branch
Anonymous	-
Matthew Waddington	-
-	The Law Society, Wales
William Robinson	Institute of Advanced Legal Studies, London
Meri Huws, The Welsh Language Commissioner	Welsh Language Commissioner
-	The Learned Society of Wales
-	HM Land Registry
Her Honour Judge Mererid Edwards, District Judge Hywel James	Welsh Language Liaison Judges
Jeremy Moody, Secretary and Adviser	Central Association of Agricultural Valuers
Anonymous	-
Sarah Capstick	Cardiff Third Sector Council
District Judge Hywel James	Association of HM District Judges