

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:

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The Association of HM District Judges (ADJ) represents over 400 District Judges who sit throughout England and Wales. There are currently 24 District Judges who sit in Wales. The ADJ has established a Wales Committee to consider responses to relevant Welsh Government Consultations. The work of a District Judge is wide ranging and includes various civil jurisdictions including claims for damages, Chancery work, and housing. We also deal with family work including public law and court of protection.

Overview of the ADJ position regarding this consultation.

The question as to whether Wales should have its own Interpretation Act is a decision for Welsh Government. We set out our responses to the questions posed. We fully concur in terms of the need for Welsh law to be clear, certain and accessible. Accessibility is necessary not only in terms of the judiciary but more importantly for the public. District Judges now deal with a large percentage of cases, both civil and family, where one if not both parties are self-representing. Clarity and easy accessibility as to the relevant law appertaining to issues in a case is essential. The recourse to the Interpretation Act 1978 on a practical level is limited, in part due to clarity it has provided. Much of the considerations of District Judges involve

definitions as contained for example in the Civil Procedure Rules and the Family Procedure Rules. Independent of any consideration as to the need for an Interpretation Act it is imperative when new Welsh laws are being introduced that advance consideration is given to any necessary changes to CPR and FPR.

The Annual Report 2017 of the Lord Chief Justice noted between 500-600 cases where the Welsh language was used. Most of such cases would have been dealt with at District Judge level. Extensive training of judges by the Judicial College to ensure they can conduct cases through the medium of Welsh has been undertaken in the past few years. One of the factors to emerge from such training is the need for clarity and consistency in terms of Welsh legal terms. Standardisation of such terms is essential. This is particularly relevant in considering section 156 (1) of the Government of Wales Act 2006 namely that English language and Welsh language texts of legislation are to be treated as “being of equal standing”.

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??

If no Interpretation Act were to be introduced to Wales, or if there were to be a significant delay, a Welsh language version of Schedule 1 of the 1978 Act is essential. The procedure is not simply a bland translation of a phrase to Welsh, it requires any phrase correlates precisely to its legal definition. Standardisation of legal terms requires work beyond simple translation. This in part is acknowledged by the provision of S156 (1). Many phrases contained within Schedule 1 may be obsolete in terms of the need for them to be considered in a Welsh language format. An Interpretation Act for Wales would have the advantage of ensuring defined versions in both languages for Wales legislation.

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

We note that Wales would be in an almost unique legal jurisdictional position if a Welsh Interpretation Act were introduced namely it would be subject to 2 such Acts. This no doubt is a potential consequence of Wales being subject to two legislative systems. There is however one legal system. If there were two Acts clarity is essential as to which Act is applicable to which legislation and if there were conflict in terms of definitions this would need to be fully justified. The benefits outlined in the consultation document are meritorious if limited to the relevant Law applicable to Wales only. A new Act would allow greater flexibility in terms of the potential for new innovative provision. In the context of an ever increasing number of self-representing litigants we would encourage a more “user friendly” approach pursuant to the principles of Plain English and Cymraeg Clir.

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

Reversing the normal means of application of an interpretation Act would provide greater certainty in ensuring binding applicability. Explanatory Notes would also provide certainty but may be less user friendly.

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

The use of explanatory notes and signposting would in our view be more problematic. Signposting would not be binding in terms of the applicability of an Interpretation Act. Use of the Cyfraith Cymru/Law Wales website would be essential whatever means were adopted.

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

We welcome many the proposed changes. Gender neutral drafting is to be welcomed though this could prove more problematic in any Welsh version given the need for mutations. In practical terms, many of the changes noted do not affect us as District Judges on a day to day level. District Judges are in terms of their day to day work more concerned as to definitions contained within CPR/FPR. Any changes for example to service by post (to update to reflect more modern/electronic means of communication) may well be applicable to Welsh law but may be in conflict with the definition in CPR.

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?

Many of the potential new provisions would be beneficial. Care however needs to be exercised to ensure that accessibility remains easy for all in terms of for example Statutory Instruments or as we have seen in the Social Services and Well-Being (Wales) Act 2014 to “Regulations” and “Codes” subsequently formulated as a result of the primary legislation. Consideration to better hyper-links may be appropriate.

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?

None

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?

Narrow interpretation of legislation provision may decrease the risk of satellite litigation where for example legislative competency is challenged. S 156 (2) does imply Welsh being adjusted to meet the English version. Provision for formal standardisation of Welsh legal terms is highly desirable.

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?

The main advantage of a new Interpretation Act would be positive in terms of the status but more importantly in ensuring parties who wish to use the Welsh language are not at a disadvantage.

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 would encourage co-operation between various authorities in ensuring the proper standardisation of legal terms in Welsh. This may be work which the Welsh Government may wish to co-ordinate and finance.

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:

None

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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