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INTERPRETING WELSH LEGISLATION

DANIEL GREENBERG RESPONSE TO WELSH GOVERNMENT CONSULTATION DOCUMENT – WG32209

1. I am a barrister with various interests in legislation including: Parliamentary Counsel (UK) 1991 – 2010; Counsel for Domestic Legislation, House of Commons, 2016 →; Editor, *Craies on Legislation* (2004, 2008, 2012, 2017); and General Editor, Westlaw UK Annotated Statutes and Insight Encyclopaedia. This response is written in a personal capacity.

2. I confine this response to the suggestion in paragraph 87 of including standard form provisions, particularly in relation to civil penalties and powers of entry.

3. In my opinion it would be inappropriate (and possibly beyond legislative competence on human rights grounds) to include in a Welsh Interpretation Act standard form provision for substantive matters involving interference with the freedom, privacy and property of the individual.

4. The suggestion in paragraph 90 of the discussion paper that "even if the standard form provision in any particular area was not wholly appropriate in a particular case, it would serve as a useful starting point that could be varied as necessary" fails, in my opinion, to reflect the reality of legislative preparation.

5. Both officials and politicians would be tempted to see (and present) the standard provision as in some way implicitly justified except where the need for specific variations could be proved; that would, in effect, reverse the burden of proof on the legislature when imposing penalties and granting intrusive powers.

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6. The proposition also in paragraph 90 that "this would mean that provision in this area would remain consistent where the same effect was wanted, and any variations would be clear, and limited to the extent necessary to achieve the desired outcome" suggests a cross-contextual application of policy that, particularly in an area that interferes with individual liberty, is neither realistic nor justifiable.

7. In general, as a matter of principle interpretation enactments should be confined to propositions that would follow as a matter of common sense in any event, and therefore merely relieve the drafter of the necessity of writing, and the reader the necessity of reading, statements of the obvious.

8. As can be seen, for example, from the case law considering the implications of notice and service in the context of section 7 of the Interpretation Act 1978, when interpretation enactments enter the field of making substantive law in the interests of consistency they generally fail to achieve their object of simplification, and end up providing more questions than answers.

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