

ENGLISH AND WELSH TEXTS OF ASSEMBLY SUBORDINATE LEGISLATION

1. Section 47(1) of the Government of Wales Act 1998 is the over-arching provision. It provides-

"The Assembly shall in the conduct of its business give effect, so far as is both appropriate in circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on the basis of equality."

2. And supplemental to that provision are sections 66(4) and 122. Section 66(4) provides that standing orders-

"must include provision for securing that a draft of [a] statutory instrument containing any Assembly general subordinate legislation may be approved by the Assembly only if the draft is in both English and Welsh unless in the particular circumstances it is inappropriate or not reasonably practicable for the draft to be in both languages."

3. Section 122 provides -

"(1) the English and Welsh texts of any subordinate legislation made by the Assembly which is in both English and Welsh when made shall be treated for all purposes as being of equal standing.

1. The Assembly may by order provide in respect of any Welsh word or phrase that, where it appears in the Welsh text of any subordinate legislation made by the Assembly, it is to be taken as having the same meaning as the English word or phrase specified in relation to it in the order.

1. An order under subsection (2) may, in respect of any Welsh word or phrase, make different provisions for different purposes.

2. Subordinate legislation made by the Assembly shall, subject to any provision to the contrary contained in it, be construed in accordance with any order under subsection (2)."

4. "Assembly general subordinate legislation" is defined by section 58(6).

5. Standing orders go further than section 66(4) and provide that all Assembly subordinate legislation to be made by the Assembly is to be prepared in both English and Welsh unless in the particular circumstances it is inappropriate or not reasonably practicable (except for

subordinate legislation subject to procedures set out in Part 2 of standing order 22). But section 122(1) will apply to the texts of any subordinate legislation made by the Assembly which is in both English and Welsh and, in relation to such legislation, the languages shall be treated for all purposes as being of equal standing.

6. The combined provisions of section 47(1) and section 122(1) mean that within an instrument the English and Welsh languages are to be treated on the basis of equality (insofar as is appropriate in the circumstances and reasonably practicable) and, in any event, the texts when made shall be treated for all purposes as being of equal standing.

7. Thus with reference to subordinate legislation which is prepared in both languages the following considerations appear relevant

8. How is the principle that the languages shall be treated on the basis of equality to be given effect?

9. And wrapped up in this consideration is the requirement that the instrument has to be considered as a whole and that the Welsh and English texts need to be considered in conjunction. In particular, this aspect is relevant to the ground contained in standing order 11.5 (vi) inviting the Assembly to pay special attention to a piece of subordinate legislation (inconsistencies between the English and Welsh texts).

10. From the practitioners' (and other users') point of view, the argument has been advanced that the placing of English and Welsh texts together in an instrument is the most appropriate way forward. This can be achieved either by opposite page format or single page dual column format.

11. But the English and Welsh texts could be set out separately in an instrument (whether English or Welsh first). A variation on this is where the text in one language is the other way up to the text in the other language (this way avoids argument about which language comes "first"). The difficulty in relation to subordinate legislation where the English and Welsh texts are set out separately, so it is argued, is that it increases difficulty in interpreting the effect of such legislation (as an instrument has to be considered as a whole).

Issues of linguistic style etc.

12. The committee have already expressed views concerning-

- the desirability of clarity of expression in texts of subordinate legislation e.g. issues of "plain English" and "plain Welsh", and
- format of, and provision of supplementary information in, subordinate legislation, e.g.

size of print and a proper explanation as to the effect of instruments in explanatory notes.

13. These are legitimate concerns as they relate to how readily an instrument can be comprehended by its users. And related to this subject area standing order 11.5(iv) provides that the Legislation Committee can draw the special attention of the Assembly to subordinate legislation if for any particular reason the form of subordinate legislation or its meaning needs further explanation.

14. But whilst it is clearly desirable that legislation should not be unnecessarily complex, such legislation may be necessarily complex simply because of the nature of the subject matter.

15. As a starting point in their consideration of this aspect, the committee might wish to consider those extracts from the Income and Corporation Taxes Act 1988, together with the suggested alternative drafting versions of them, circulated previously by Mr John Marek, AM.