Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 1 – Senedd
Meeting date: 18 November 2019
Meeting time: 13.30

For further information contact:
Gareth Williams
Committee Clerk
0300 200 6362
SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

13.30

2 The future of Welsh law: classification, consolidation and codification: Evidence session

13.30–14.30 (Pages 1 – 61)

Jeremy Miles AM, Counsel General
Dylan Hughes, First Legislative Counsel (Director), Welsh Government
Claire Fife, Policy Advisor to the Counsel General, Welsh Government

CLA(5)-32-19 – Briefing
CLA(5)-32-19 – Paper 1 – Welsh Government consultation document – The future of Welsh law: classification, consolidation, codification

3 Instruments that raise no reporting issues under Standing Order 21.2, 21.3 or 21.7

14.30–14.35 (Pages 62 – 63)

CLA(5)-32-19 – Paper 2 – Statutory instruments with clear reports

Negative Resolution Instruments

3.1 **SL(5)469 – Code of Practice on the exercise of social services functions in relation to Advocacy under Part 10 and related parts of the Social Services and Well-being (Wales) Act 2014**

4 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

14.35–14.40

Affirmative Resolution Instruments

4.1 SL(5)467 – The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

(Pages 64 – 71)

CLA(5)-32-19 – Paper 3 – Report

CLA(5)-32-19 – Paper 4 – Order

CLA(5)-32-19 – Paper 5 – Explanatory Memorandum

4.2 SL(5)468 – The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

(Pages 72 – 100)

CLA(5)-32-19 – Paper 6 – Report

CLA(5)-32-19 – Paper 7 – Regulations

CLA(5)-32-19 – Paper 8 – Explanatory Memorandum

5 Paper(s) to note

14.40–14.45

5.1 Letter from the Counsel General: Publication of Writing Laws for Wales

(Pages 101 – 200)

CLA(5)-32-19 – Paper 9 – Letter from the Counsel General, 7 November 2019

5.2 Letter from the Minister for Finance and Trefnydd: UK regulations relating to exiting the European Union

(Pages 201 – 205)

CLA(5)-32-19 – Paper 10 – Letter from the Minister for Finance and Trefnydd, 11 November 2019

CLA(5)-32-19 – Paper 11 – Letter to the Minister for Finance and Trefnydd, 18 October 2019

6 **Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

14.45

7 **Consolidation and Codification: Consideration of evidence**

14.45–15.00 (Pages 206 – 208)

CLA(5)-32-19 – Paper 12 – Letter to Business Committee

8 **Wild Animals and Circuses (Wales) Bill: Draft report**

15.00–15.15 (Pages 209 – 221)

CLA(5)-32-19 – Paper 13 – Draft report

Date of the next meeting – 25 November 2019 (TBC)

Agenda Item 2

Document is Restricted

Number: WG39203

Welsh Government

Consultation Document

The future of Welsh law: classification, consolidation, codification

Date of issue : 17 October 2019
Action required : Responses by 16 January 2020

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

Overview	Proposals for the future classification, consolidation and codification of Welsh law.
How to respond	Please complete the online form, or complete and return the questionnaire at the back of this document. The questionnaire should be returned to LegislativeCounsel@gov.wales
Further information and related documents	**Large print, Braille and alternative language versions of this document are available on request.**
Contact details	For further information: Office of the Legislative Counsel Welsh Government Cathays Park Cardiff CF10 3NQ email: LegislativeCounsel@gov.wales telephone: 0300 025 0375

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The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
Website: https://ico.org.uk/

The future of Welsh law: classification, consolidation, codification

Contents

Foreword by the Counsel General

We in the Welsh Government take our responsibilities as custodians of Welsh law very seriously. The United Kingdom's 'statute book' is vast and inaccessible, and our intention, having been able to develop our own laws for some years now, is to do things differently. This will not, however, be easy – nor will it happen quickly. Our task will take a generation and more to fully achieve; but we must make start, and start as we mean to go on.

This document is, firstly, a vision for the future. A future in which all laws that fall within the legislative competence of the Senedd are in order, easy to navigate, available in up-to-date form and as understandable as the complexity of the content allows. Achieving this requires a revamp of the statute book through consolidation of existing law and, once in order, a process of codification intended to keep the law in order. It also means improving the way we publish legislation and provide explanatory material about legislation.

The purpose of the document is also to describe how we intend to get there. So we set out what we mean by consolidation, what we mean by codification and outline other projects that will contribute to our goal.

But I should stress also that although we have been giving these issues much thought over many years, and have worked in collaboration with the Law Commission and the Senedd on numerous aspects of what is proposed, we do not have a monopoly on good ideas. This is being done for the benefit of users of legislation – most importantly the citizens of Wales – and we welcome any suggestions that would help us fulfil our vision.

JEREMY MILES AC/AM
Cwnsler Cyffredinol Cymru
Counsel General for Wales

Overview

1. The inaccessibility of the law across the United Kingdom, and in particular in Wales, has been subject of much discussion and analysis in recent years. The Welsh Government has been conscious of the problem for many years and has been taking action (albeit limited) to improve the accessibility to Welsh law since 2011.

2. The Senedd has recently enacted legislation that commits the Government to take action. The purpose of the **Legislation (Wales) Act 2019** is to make Welsh law more accessible, clear and straightforward to use. It makes provision about the interpretation and operation of Welsh legislation, and requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law.

3. We explain the **context** – the issues that need to be addressed and actions taken to date – in more detail in **Chapter 1**.

4. We have already published a Draft Taxonomy for Codes of Welsh Law – this sets out a proposed structure for a codified system of legislation. This structure will involve **classification** of legislation by subject matter that will lay the foundation for additional work to make the law more accessible. The outline structure is revisited in this paper and sets out a proposed system for classifying the law. This can be found at **Chapter 2** and **Annexes A and B**.

5. **Consolidation** of existing law will make the most significant contribution to making the law accessible, however this is a time consuming and often complex process that will take decades to complete. We look at consolidation in more detail in **Chapter 3**, in particular looking at what can be included in a consolidation Bill.

6. But if consolidation is an exercise in bringing order to the statute book, then once order has been achieved it must be maintained. This is the reason the Welsh Government's proposal for a system of **codification** of legislation is important. Codification is essentially a process of discipline designed to retain the structure (but not, of course, the content) of a newly rationalised statute book. This is considered further at **Chapter 4**.

7. To maximise the benefits of consolidation and codification, and indeed to improve accessibility more generally, legislation needs to be supplemented by better **communication** about its effect and where necessary further **clarification** of its meaning. Legislation must, therefore, be published more effectively and be accompanied as appropriate with further explanatory material. As consolidating the law is a very lengthy and resource intensive process better communication is something that needs to start now and continue to be refined as order is brought to

the statute book. Our mechanisms for doing this will be the Cyfraith Cymru / Law Wales website and the legislation.gov.uk website. This is examined in more detail at **Chapter 5**.

8. We are keen to hear your views and at various points in the paper we ask specific questions. This **consultation** is summarised in **Annex C**. We intend to use the views obtained to refine our approach to codification and improving the accessibility of Welsh law.

Chapter 1: Context

Inaccessibility of the law

9. Concerns have been raised for many years about the complexity of the law in the United Kingdom and the disorganised state of our vast and sprawling statute book. It is a problem caused not only by the sheer volume of primary, secondary and quasi-legislation, but also because that legislation is amended, re-amended and re-made in inconsistent ways over time. This practice creates layers of legislation which may be related or interconnected in a number of different ways, making the legislative landscape very difficult for lawyers to navigate let alone the affected citizen.

10. The nature of the UK constitution, coupled with the process by which powers have been devolved, further complicates the statute book. The problems are particularly acute in Wales. Although the position is changing rapidly, and there is a growing body of law made by the Senedd and the Welsh Ministers[1], the majority of the laws that apply to Wales still apply also to England or to Great Britain or the UK as a whole. Our laws have in most part been inherited from the UK Parliament and do not, therefore, generally reflect the nation's political and constitutional position as it is today.

11. In addition determining where the line is drawn between a matter that is devolved and a matter that is not, is considerably more difficult in Wales than is the case in Scotland and Northern Ireland due to our more narrow and complex arrangements. The incremental and piecemeal approach to devolution of power, has led to confusion over where responsibilities lie. As an obvious example, many powers conferred upon the Secretary of State by Acts of Parliament have now been transferred to the Welsh Ministers, but this is generally not apparent from the wording of the Acts themselves making it appear that power continues to lie with the Secretary of State.

12. The UK's withdrawal from the European Union is likely to compound this problem. The exercise of incorporating law designed as international law, and based primarily on the creation of the single market, into domestic law will further exacerbate the problem of inaccessible law. The European Union (Withdrawal) Act 2018 will convert a large body of EU law into domestic law at the point of withdrawal, and enables subordinate legislation to amend that law that so that it can operate correctly outside the EU. Other legislation will also be required in connection with withdrawal from the EU, and the final position remains unclear, not

[1] Despite their only comparatively brief existence as a legislature and government, the Senedd has passed 63 Measures or Acts since 2007 and the Welsh Ministers have made over 6,000 statutory instruments since 1999 – though this represents only a small fraction of the UK statute book.

least because much depends on the nature of the UK's future relationship with the EU. Further action will need to be taken to rationalise the law, but how that is done will depend on the extent to which European standards are retained.

Detrimental effects of inaccessible law

13. Although the exact monetary costs associated with inaccessible law are unknown, it is more or less self-evident from the nature of examples of the issues caused by inaccessible law that there are costs to the economy as a whole. Inaccessible law pushes up the costs of accessing the law by increasing the time and resource needed to research and apply law; not only for lawyers in practice or working in-house in the public and private sectors but also for businesses and citizens who may find it impossible – or at least disproportionately expensive – to access the law directly. Furthermore, because of the time and resource constraints within which lawyers and other people accessing the law must operate, inaccessible law can lead to limited or inaccurate legal analysis and advice. This in turn can adversely impact not only the businesses relying on their own analysis or receiving legal advice but also, ultimately, the court system; to which it inevitably falls to resolve disputes arising from these errors. Improving the accessibility of the law would reduce the costs associated with these issues and benefit the people of Wales.

14. Probably more significant, however, is the social cost of the current situation. Being able to find and understand the law with reasonable ease is essential for citizens to be able to enjoy the benefits, and respect the obligations, that the law confers or imposes on them. Given that access to justice more generally, notably through state funded legal advice, is under such threat, ensuring that people have a fighting chance of understanding the law is vital. It goes to the heart of a nation governed by the rule of law.

Steps taken so far to improve Welsh law

Reforming Welsh law

15. Because much of the complexity of the law derives from legislation that applies to the four constituent parts of the UK being intertwined, one of our goals when legislating is to develop law that for Wales that stands apart. This, however, is not as straightforward as it may appear. The length of many enactments, and the often high number of enactments that exist relating to a particular subject, can make it impractical. This is because policy proposals for legislative reform often involve relatively small and self-contained changes to the law. In such a case it is almost always much easier simply to amend existing law rather than to embark on creating wholly new law for Wales that stands apart.

16. The Welsh Government has, however, been able to combine a number of proposals for legislative reform with the goal of making the law more accessible. This can generally be done in two circumstances: firstly, where the number of changes to the law proposed and the breadth of their content mean that starting with a clean sheet of paper is simpler than changing the existing law; and, secondly, where the subject matter of the law that is being changed is itself relatively narrow (and therefore has less content).

17. An example of legislation which was long and wide-ranging in its effect is the Renting Homes (Wales) Act 2016. This implemented a Law Commission Report first published in 2006[2]. The Act departs from the original Law Commission Bill in a number of ways, but retained the main innovations such as prescribing core provisions relating to the relationship between landlords and occupiers that must be contained in contracts. Overall the purpose of the Act is to make it simpler and easier to rent a home, replacing the various and complex pieces of existing tenancy legislation with one clear legal framework. That framework is, therefore, specific to Wales meaning that it is bespoke and bilingual.

18. A similar example can be seen in the field of social care. Between them, the Social Services & Well-being (Wales) Act 2014 (again based in part on a Law Commission Report) and the Regulation and Inspection of Social Care (Wales) Act 2016 contain nearly all of the law on social care in Wales. Not all of this law was reformed but the extent of the change in the law meant that the sensible approach was to restate those areas of the law that were unaffected. This again had the advantage of setting out the law more clearly, bilingually and within a coherent context.

Restatement of Welsh law

19. As referred to above, “restating” the law is an important concept. In our context this means that legislative provisions which are connected to other legislative provisions that are being reformed are remade within a new Welsh context. Doing this involves disapplying the original provisions (either by repealing them or providing that they no longer apply to Wales), redrafting them (bilingually) in a modern style and re-enacting them alongside law that has been changed.

20. Perhaps the best and most obvious example of this practice was our approach to changing the law on consent for organ donation. Prior to the Welsh reform the law on use of organs was all contained in the Human Tissue Act 2004, which regulates the law on use of human body parts for 15 different purposes. This Act applies to

[2] After the Welsh Government announced its intention to implement the Law Commission Bill, the Law Commission published the report “Renting Homes in Wales” (Law Com No 337) in 2013, which updated the original report and addressed additional issues specific to Wales.

England, Wales and Northern Ireland. From the perspective of those legislative counsel tasked with drafting the change in the law, amending this existing legislation would have been the more straightforward proposition. However this would have also involved making modified provisions for Wales within a framework that also applied outside Wales. The result would have been that the Bill promoting the change, and the eventual amended legislation, would have been more difficult for others to understand. In consequence the decision was taken to remake (for Wales only and in bilingual form) all of the law on consenting for use of organs for the sole purpose of transplantation. This involved enacting 4 new sections (setting out the change in the law) and 26 restated sections (which contained the context within which the law had been changed) in the Human Transplantation (Wales) Act 2013.

21. Another notable example, which is perhaps an amalgam of the two methods referred to above, was the Mobile Homes (Wales) Act 2013. This Member-proposed Bill started as a proposal to make six significant changes to the existing law, which applied to England and Wales. Although those changes would not of themselves have ordinarily justified re-enacting all of the law (i.e. the legal change proposed was not wide-reaching in effect), the existing law had been amended so many times (including several provisions which applied to England only) it was already complex. A decision was taken, therefore by the Government to amend the Bill so that it would reform and restate all of the legislation on mobile homes in Wales. This was a challenging and more resource intensive process but it left the law considerably clearer than would otherwise have the case.

Law Commission projects

22. The Law Commissions Act 1965 created two Law Commissions, one tasked with keeping the law of England and Wales under review and one tasked with the same responsibility for Scotland. The aims of the Law Commission of England and Wales are:

    - to ensure that the law is as fair, modern, simple and as cost-effective as possible,
    - to conduct research and consultations in order to make systematic recommendations for consideration by Parliament, and
    - to codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes.

23. The 1965 Act was recently amended to provide (among other matters) a new mechanism for the Welsh Ministers to refer issues to the Commission (something that had previously been controlled by the Lord Chancellor).

24. At the Welsh Government's request the Law Commission of England and Wales included a project in their Twelfth Programme of Law Reform considering the *"Form and Accessibility of the Law Applicable in Wales"*. At the heart of the Commission's report (published in June 2016), and central to the task of making Welsh law more accessible, is the need to consolidate and subsequently codify Welsh law. The Law Commission made 32 recommendations, nearly all of which have been accepted or accepted in principle by the Welsh Government, including the need to institute regular programmes of consolidation and codification. The report influenced the development of the Legislation (Wales) Act 2019 which is considered in further detail below.

25. The Welsh Government's ambition for the future statute book was already clear, but the assistance of the Law Commission was particularly helpful in order to expose what was proposed to scrutiny. This was done both using the technical knowledge of the Commissioners and their officials, and by consulting with the wider legal profession and other users of legislation.

26. In addition the Law Commission can provide, or call upon, subject specific expertise to assist the Welsh Government. A major project is underway to modernise and consolidate the law on planning in Wales[3]. This brings together policy and legal expertise from the Welsh Government and the Commission, working closely with the Office of the Legislative Counsel.

27. We expect later this year the Law Commission will also begin a project to review the law governing the operation of the devolved Welsh tribunals. The existing rules and procedures for the various devolved Welsh tribunals are complicated and inconsistent, having developed piecemeal from different legislative provisions concerning the different subject matter of the tribunals. Much of this legislation was developed before devolution, and also before tribunals were recognised as involving exercise of the judicial function of the state, rather than the executive function. Further, the legislation does not take into account the role of the President of Welsh Tribunals, introduced by the Wales Act 2017. Subject to Ministerial approval, the project is intended to lead to the development a new Tribunals Bill for Wales, designed to regulate the operation of a single system for tribunals in Wales.

Legislation (Wales) Act 2019

28. The purpose of the Legislation (Wales) Act 2019 is to make Welsh law more accessible, clear and straightforward to use. It makes provision about the interpretation and operation of Welsh legislation, and requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law.

[3] We are also working on consolidating the law on the historic environment, though this does not involve the Law Commission.

29. The policy objective is to improve the accessibility of Welsh law. Although resolving the issues will require collective effort within the Senedd, the Welsh Government and beyond, the Counsel General has the responsibility of overseeing the accessibility of Welsh law as a whole. It is intended that this be achieved by requiring the Counsel General to keep the accessibility of Welsh law under review, and for the Welsh Ministers and the Counsel General to bring forward a programme of projects designed to make the law more accessible. This enables a long term focus to be brought to what will need to be a sustained effort to create a modern, well-ordered and bilingual statute book for Wales.

30. The Counsel General's obligation is also relevant when the Welsh Ministers are considering whether to propose new legislation. In such situations regard should be had to how the approach taken to legislating could impact upon the accessibility of the law. This does not, however, mean that the Welsh Ministers would have to legislate in a particular way in any individual case.

31. For each Senedd term (starting with the term which begins in 2021) the Welsh Ministers and the Counsel General must develop and implement a programme of activity designed to improve the accessibility of Welsh law. The specific content of each programme will be a matter for the Welsh Ministers and the Counsel General of the time, but each programme must make provision to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and facilitate use of the Welsh language.

32. Crucial to the success of consolidating and codifying the law is that both continue over the long term and become an accepted part of the culture of law making in Wales. This means accepting that the law is constantly evolving and must, even after it has first been consolidated, be revisited periodically to ensure that it remains well ordered and accessible. It also means maintaining the overall structure – not the content, which will always change in accordance with policy and political wishes – of the statute book.

33. In preparing a programme it will be important to take the views of the public. The main purpose of such an exercise will be to ensure focus on those areas of law most in need of consolidation and which have most impact on users of legislation (be they public bodies, business or the citizen). It is anticipated that the first programme will be prepared in draft and consulted upon during the summer of 2021, before being agreed by the Welsh Ministers and Counsel General and laid before the Senedd.

34. In developing the Welsh Government's proposals for the first programme, views are being sought now on specific areas of the law which users find particularly inaccessible – see Chapter 4 for more on this.

Beginning the process of consolidation and codifying the law

35. The Welsh Government proposes to approach the process of making the law more accessible through four main initiatives, each of which is examined in further detail in the following chapters:

    - setting a framework for bringing order to legislation by reference to a scheme of **classification** (or taxonomy) of its subject matter (see Chapter 3);

    - remaking Welsh law in accordance with that classification primarily by **consolidation** existing legislation (see Chapter 4);

    - putting in place a process of **codification** of the law once it has been consolidated so that it remains within the scheme of classification without proliferation (see Chapter 5); and

    - improving our **communication** about the law and providing more non-legislative **clarification** of its meaning (see Chapter 6).

Chapter 2: Classification of Welsh law

36. The next step on the journey to an ordered statute book for Wales is to set out how we would like the statute book to be organised. This is to be done by developing a system of classification of the law – in other words a taxonomy of its subject matter, by reference to which we will organise the various Acts, Statutory Instruments and other forms of subordinate legislation which make up the law.

37. As well as setting out a high level taxonomy, detailed work is needed to map the content of the existing statute book in devolved areas to establish what enactments should fall under each subject heading of the taxonomy. This in turn would enable us to expand the taxonomy to a more specific tier of subjects by reference to which the law would be organised.

38. To assist our understanding of how the law could be organised the Office of the Legislative Counsel has already developed an indicative taxonomy of possible Codes (see Annex A). This was first published in December 2018 for information, and although it was not designed to cover all areas of devolved law, it suggested how legislation in most key areas could be organised. This indicative division of legislation needs further consideration, including more detailed scoping and analysis of the existing law. This will be an ongoing process over the next 18 months or so, and we are seeking stakeholders' views on the initial proposals.

39. The goal is to organise the statute book by reference to commonly understood subject categories, and therefore the Welsh Government would like to know whether users of the statute book consider the proposed subjects and sub-topics to be organised in a way which is logical and sensible to them. We recognise there are fine judgements about where boundaries should lie.

40. Establishing a logical and clear classification will enable the Welsh Government to develop a new method of publishing the law as it stands, by subject matter. This will serve a dual purpose of (firstly) being a relatively fast means of improving the way the law is published and (secondly) establishing a clear starting point for the further initiatives necessary to make the legislation truly accessible.

41. Working in conjunction with The National Archives, the Welsh Government intends, therefore to develop a new database of legislation within devolved areas. This will be similar to a service currently provided on the legislation.gov.uk website called "Defralex" [4] which has been developed by the UK Government's Department for Environment, Food and Rural Affairs.

[4] Available at: http://www.legislation.gov.uk/defralex

42. Defralex adds an additional step to the normal process of publishing legislation on legislation.gov.uk, enabling additional information fields to be captured and displayed that are of interest to the Department and its stakeholders. These include the subject 'category' (e.g. animal health and welfare, environment), the 'source' of the legislation (to distinguish legislation that is of EU, international or domestic origin), and the type of legislative features introduced (e.g. permits, offences, fees or charges). Associated documents that may be of interest to the public and which improve transparency can also be added to specific legislation, such as Impact Assessments and consultation responses.

43. The Welsh Government will develop a similar system (with "Cymrulex" currently adopted as a working title) which will initially organise all *new* legislation by reference to our evolving subject taxonomy and a wider system of classification similar to "Defralex". Once that is in place we will work back to retrospectively organise all existing legislation using the same classification criteria.

44. This process of organising legislation by subject classification will also inform the next step in the process – consolidation of that existing law and publishing it as Codes.

Question 1: With reference to the draft taxonomy in Annex 1, do you agree with the suggested structure of subjects and sub-topics?

Question 2: Do you have any suggestions for improving this draft taxonomy?

Chapter 3: Consolidation of Welsh law

What is consolidation?

45. The purpose of consolidating legislation is to improve access to the law. This is done both by bringing together all or most of the (generally primary) legislation on a specific subject so that it can easily be found, and by modernising the form and drafting of the law to make it easier to understand and apply. Dictionary definitions refer to consolidation as the action or process of "combining a number of things into a single more effective or coherent whole" or of "making something stronger". The Welsh Government's aim is to do both.

46. Consolidating the law generally involves bringing all legislation on a particular topic together, better incorporating amendments made to legislation after it has been enacted and modernising the language, drafting style and structure. It is similar to the notion of "restatement" referred to in the previous Chapter in the sense that it involves remaking existing law, but consolidation normally involves a whole Act and often many Acts – updating provisions and bringing them together. This again involves no or only minor amendments to the substance of the law consolidated. In Wales consolidation of the law will involve for the most part re-enacting laws previously made by the UK Parliament, and doing so bilingually.

47. Although the benefits of consolidation are clear, and consolidation exercises are undertaken routinely in many Commonwealth jurisdictions, very little consolidation has been undertaken in the UK in recent years. This is despite consolidation being part of the remit of the Law Commission, a body which has held a long standing ambition to bring order to the statute book. It is important to understanding why so little has been done to consolidate the law in the UK given its obvious benefits to improve accessibility.

48. Perhaps most obviously priority has traditionally been given to changing the law, to reflect new policy and legislative initiatives and to tackle the issues that most affect the citizen. This is done on a case by case basis, and as a result the accessibility of the statute book as a whole is not the primary consideration.

49. Additionally there are other more practical problems. Consolidating the law is time-consuming and relies heavily on scarce specialist legislative drafting resource. The law that is being consolidated must also be relatively static, in other words it must stand still long enough for it to be consolidated. There is a risk, therefore, of embarking on large scale process of consolidation only to find that political priorities change and a new focus emerges on reforming the law before the consolidation can be completed.

50. It was partly for these reasons that the Welsh Government sought to impose a statutory obligation on itself to keep the accessibility of the law under review and to bring forward programme of activities designed to improve it. The Welsh Government and the Senedd are conscious of these problems and appreciate that it is particularly acute in Wales. Developing a statute book that is fit for purpose is part of our broader vision for improving the way Wales is governed.

Scrutiny of the consolidation process

51. The process for developing programmes of activities designed to make the law more accessible – and for producing consolidation Bills – will need to strike an appropriate balance between expedience on the one hand and the requirement for scrutiny on the other. It must be borne in mind that the process of consolidation is a technical one and is one that does not allow for any significant change to the substance of the law. Its purpose is not to bring about policy reform and in consequence developing, scrutinising and passing a consolidation Bill is intended to be primarily a legal process.

52. However, the Welsh Government is very conscious also that we must concentrate our efforts on activity that is wanted by stakeholders and which will make the most difference. In addition, consolidation does of course mean legislating and it goes without saying therefore that what is done must be subject to appropriate scrutiny from our Senedd. So the programmes envisaged by the Legislation (Wales) Act 2019 must be subject to consultation and the consolidation Bills that subsequently emerge must be scrutinised.

53. The Senedd does not currently[5] have a dedicated procedure under its standing orders for the consideration of a consolidation Bill. Both the Senedd's Business Committee and the Constitutional and Legislative Affairs Committee of the last Senedd recommended the introduction of such a procedure. In December 2016 the (then) Counsel General wrote to Business Committee suggesting that officials from both the Government and the Senedd Commission worked together to develop a procedure, as part of the response to the Law Commission's 2016 report.

54. In July this year, the Business Committee agreed the broad outline of such a procedure, and has recently started consideration of a draft Standing Order and accompanying Llywydd's guidance. The Business Committee is currently consulting with the Constitutional and Legislative Affairs Committee on those.

55. Having been closely involved in the process of drawing up the draft procedure, our vision for consolidation of the law is entirely consistent with the proposals that are being considered by Business Committee. What follows below reflects that. We will

[5] As at the time of publication of this position statement

continue to work with the Llywydd and Business Committee in bringing proposals forward for Members of the Senedd to consider in the near future. But as a starting point we should be clear that the rules about what a consolidation Bill may do are not a matter for the executive but rather for the legislature.

56. As this will be a programme pursued by the Government, and as the Government is ultimately responsible for the coherence of the statute book, the intention is that a consolidation bill will be introduced into the Senedd by a member of the Government (rather than as a Member Bill, or a Committee or Commission Bill). This is consistent with practice elsewhere, and in our context would, most likely, be introduced by the Counsel General. The purpose of such a Bill would be to consolidate existing primary legislation and consolidation may also incorporate existing secondary legislation or rules of common law.

The type of matters which can be dealt with in a consolidation exercise

57. Although a consolidation Bill should not bring about policy reform that does not preclude a consolidation Bill from making any substantive changes to the law. Consolidating the law – particularly in the Welsh context – is a complex matter and is likely to reveal inconsistencies and anomalies in existing legislation. Producing a modern and accessible version of existing law may also demand, or benefit from, making minor amendments. By necessity, however, such amendments may only be minor and non-controversial – any other change that that the Government might wish to pursue as necessary or desirable would have to be dealt with by way of a reform Bill (and considered by the Senedd under Standing Order 26).

58. In developing its position on the nature and extent of consolidation we have considered examples of such Bills within the UK, as well as looking to other Commonwealth countries (including New Zealand and Australia). There are several common features of consolidation, and these are considered further below, taking into account the Welsh context.

Organisation, language and format

59. Consolidation Bills can restate existing legislation with any changes of order, language or format appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice[6].

60. Preparing a consolidation Bill can result in legislation which looks very different to the original text. Significant presentational changes designed to modernise the language and make its structure more accessible can be achieved without making changes to the effect of the law.

61. In practice this could include:

    a. renumbering and rearranging provisions and expressing provisions in a way that reflects their actual legal effect[7].

    b. changing the language of legislation that exists only in English to facilitate the production of a coherent bilingual Bill. A consolidation exercise would also adopt gender neutral language and modernise the language in any other way (including by omitting redundant wording).

    c. adopting other changes of format such as labels and headings; new tables, formulae or other ways of presenting information; and including navigational aids such as overviews and signposting provisions[8].

    d. potentially setting out in full provisions of other legislation that are incorporated into the consolidated legislation.

Clarifying application or effect

62. The application or effect of existing provisions may be unclear because their drafting creates doubt or ambiguity (for example, uncertainty about when a period of time ends or about which bodies are subject to a duty). A consolidation Bill should be able to clarify the intended meaning, for example by spelling out more clearly when a particular provision or definition applies. For existing legislation which is bilingual, clarification may include reconciling any ambiguities in either language or both.

[6] Current drafting practice is set out in *Writing Laws for Wales: A guide to legislative drafting* published by the Welsh Government (October 2019)
[7] for example adopting terminology that reflects devolution and other transfers of functions that have taken place since the existing legislation was passed
[8] including signposts to legislation not included in the consolidation but relevant to it

63. Clarification may involve filling in gaps in the legislation, for example by including definitions of terms that the existing legislation does not define, or by spelling out that the application of a provision is limited to the particular cases in which it is relevant. In the Welsh context this could include clarifying the effect of transfers of functions “in relation to Wales” by providing a clearer territorial limit in a consolidation Bill (and a corresponding territorial limit in any enactment which forms part of the consolidation but which will continue to apply to England after the consolidation Bill is passed).

64. There are examples of consolidation Bills produced elsewhere[9] where clarification of intent has also involved rectifying the position where the wording of existing provisions does not reflect the meaning they are understood to have in practice, or where different enactments make provision about the same matter which is or may be contradictory.

65. The Government is clear that where a consolidation Bill seeks to clarify the meaning of existing provisions in any of these ways, it should do so in the way that best reflects the meaning that the provisions are understood to have, or that the legislature is believed to have intended.

66. During the passage of the Legislation (Wales) Act 2019, the Counsel General explained that there is no intention to use consolidation Bills to undertake wholesale codification of the common law. However a consolidation bill could (and generally should) incorporate the effect of case law on the meaning of the existing legislation where relevant. In certain circumstances it may also be sensible to incorporate rules of common law that are closely related to the statutory provisions, in order to provide a more complete restatement of the existing law.

Removing or omitting provisions which are obsolete, spent or no longer of practical utility or effect

67. Consolidation Bills may need to remove or omit provisions which are obsolete, spent or no longer of practical utility or effect. Although these terms are often used interchangeably, in this context they tend to cover slightly different issues. An obsolete provision would include a provision which is out-of-date, for example because it is about bodies, persons or things which are no longer in existence or use. A spent provision is one which applies to a situation which can no longer exist, such as a provision conferring a function which cannot be used again (for example, because the original legislation provided for one action to be taken and this has been done, or the conditions for use can no longer be met).

[9] See for example the Co-operative and Community Benefit Societies Act 2014 (a consolidation Act of the UK Parliament) which removed a requirement for there to be “special reasons” for registering a society, to reflect how the provisions were applied in practice and were originally intended to be applied. This was not about inconsistency in the legislation itself

68. Something which is no longer of practical utility or practical effect could include provisions which are no longer necessary as legal provision is available elsewhere (either within the consolidation Bill or in other legislation applicable in Wales) which has an equivalent legal effect.

69. Removing provisions of all three types would benefit the accessibility of the consolidated legislation, as well as any legislation which needs to be amended as a result of the consolidation exercise (see also below).

Minor changes to the law for the purposes of achieving a satisfactory consolidation of existing law

70. Changes may be required to achieve a satisfactory consolidation of the law. Again constrained by not making substantive policy change, such minor changes could include resolving inconsistencies in the application of the law in different cases, where the reasons for a difference are no longer applicable or cannot be identified. By way of example, this could include:

    a. removing or reconciling inconsistencies in regulation making powers across different provisions;

    b. ensuring that where a matter is dealt with on the face of one Act, but by subordinate legislation in another Act, both can be dealt with in primary or secondary legislation (as may be appropriate);

    c. ensuring like cases are treated in the same way in the consolidation Bill, for example by reconciling any inconsistencies between provisions which have come from different enactments or by extending general provisions or definitions in one of the existing Acts to cover all of the enactments being consolidated;

    d. in cases where notice must be given in writing, and some existing legislation states the requirement for writing expressly but some does not, the requirement to give notice in writing can be set out in all of the provisions (or none of them if it is so obvious as to not need stating).

    A satisfactory consolidation could also result in minor changes to correct mistakes or anomalies in the existing legislation being consolidated.

71. In addition it will be important to ensure that the consolidated legislation would be compatible with the Convention rights. This could include incorporating the effect of case law which has rendered the existing provision(s) compatible with Convention rights; it also may include amending or omitting an existing provision or making

new provision where it is clear such a change is necessary to ensure that the law is compatible with the Convention.

72. In the Welsh context it will be necessary to provide that the consolidated legislation will operate correctly in relation to Wales, taking account of any cross-border issues between Wales and England. Minor changes may also be necessary to ensure consistency in and between the Welsh language and English language texts of the Bill.

73. Over time legislatures have established positions on which matters should be dealt with in subordinate legislation and which in primary legislation. The consolidation Bill should reflect current drafting practice (based on the Senedd's approach on the balance between primary and subordinate legislation). It may therefore be necessary to move provisions from subordinate legislation to primary legislation (and occasionally from primary to subordinate legislation) or changing the form of subordinate legislation or the procedure that applies to it, to improve the consistency or coherence of the relevant body of legislation. For example, where provisions about a particular issue are contained partly in primary legislation and partly in subordinate legislation, it may be appropriate to move provisions from one level to the other, so that everything about that issue is in the same place. Similarly, if regulations or orders deal with an important issue affecting how the legislation works, material in the regulations or orders might be more appropriately restated in the Bill.

74. Another example, of a minor change could arise from when there is a power to use subordinate legislation to modify the operation of primary legislation, and all the necessary modifications have already been made, it may be appropriate to get rid of the power and incorporate the modifications into the restatement of the primary legislation.

75. In line with current drafting practice, powers for Ministers to legislate by order will generally be restated as powers to make regulations[10]. It may also be appropriate to replace powers to make directions of general application (as opposed to directions addressed to specific individuals) with powers to make regulations. Similarly where an existing power to make subordinate legislation is not subject to any Senedd procedure, but such a power would nowadays be expected to attract Senedd procedure, a consolidation Bill may restate the power with an appropriate procedure. A consolidation Bill may also remove other inconsistencies and anomalies in procedural provisions.

[10] Notwithstanding section 39 of the Legislation (Wales) Act 2019 which applies where the Welsh Ministers have a power to make regulations, rules or an order by statutory instrument. It enables them to make the subordinate legislation in any of those forms. See the Explanatory Notes to the Act for a fuller account.

Law Commission recommendations for a consolidation Bill

76. It may be desirable for a consolidation Bill to make other changes to the law which the Law Commission of England and Wales recommends are appropriate for inclusion within a consolidation Bill. This would not mean that consolidation Bills can be used to give effect to all law reform proposals made by the Law Commission, but it could cover changes to the law which it would be convenient to make at the same time as consolidating the existing law, and which do not involve significant new policy or give rise to significant controversy. Examples of this type of change could include amending a set of procedural requirements to ensure that they work better in practice, or simplifying them to remove redundant steps from the procedure.

Transitional provisions, savings, consequential amendments and repeals

77. It will also be necessary to ensure a consolidation exercise makes appropriate transitional and saving provisions, and makes consequential amendments and repeals of existing legislation (including amendments to ensure that existing legislation continue to operate correctly in relation to England).

78. Such provision could be made in a Schedule to the consolidation Bill, or potentially as a second consolidation Bill, which would ensure the main consolidation Bill would stand as the substantive statement on the law once enacted (and so leave the main Act uncluttered with consequential provisions which are unlikely to be of significant relevance to most readers). A similar approach was taken when NHS legislation was consolidated separately for England and Wales in 2006, and when water and planning legislation were consolidated into new sets of Acts in the early 1990s.

Proposed consolidation projects

79. As noted earlier, a major project to consolidate planning law on the back of the Law Commission's report is underway. We are also working to consolidate the law on the historic environment. The Welsh Government will publish more information about these projects in due course.

80. Further consolidation projects, and other activities aimed at improving the accessibility of Welsh law, will be included in the programmes to be brought forward under the Legislation (Wales) Act 2019. The first formal programme will begin in 2021, and the Government is required to publish a draft programme for consultation during the summer of that year.

81. As set out above, the Welsh Government is very conscious that we should concentrate our efforts on activity that is a priority for stakeholders and which will

make the most difference. Therefore to help shape the programme which will be consulted upon in 2021 it would be helpful to understand now if there are particular areas of the law which you consider would benefit from consolidation.

Question 3: What specific area or areas of devolved law do you think are most in need of consolidation, and why?

Chapter 4: Codification of Welsh law

82. Having categorised Welsh law through the classification process outlined above, and having committed time and effort to consolidating the law, a mechanism is needed to preserve the order that will have been achieved. A problem experienced in the past when consolidating the law is that political change can unravel the accessible structure and order put in place by the consolidation process. Here it is vital to distinguish between the *content* of the law which will always be subject to change in the normal way, and its overarching *structure* which (depending on the extent to which the content has changed) may be able to be retained.

83. The process designed to preserve the structure of the statute book once it has been brought into order is codification. The Legislation (Wales) Act 2019 requires each Welsh Government programme to improve the accessibility of Welsh law to include proposed activities intended to contribute to an ongoing process of consolidating and codifying Welsh law, and maintain the form of Welsh law (once codified)[11]. The Act explains that 'codifying Welsh law' includes–

    a. adopting a structure for Welsh law that improves its accessibility;

    b. organising and publishing consolidated Welsh law according to that structure.

84. As the Explanatory Notes to the Act set out[12]:

    The definition makes clear that codifying the law is intended to bring order to the statute book. This involves organising and publishing the law by reference to its content (and not merely when it was made), and maintaining a system under which that law retains its structure rather than proliferating. A "Code" of Welsh law would generally be published once some or all of the primary legislation on a particular subject (taking account of the legislative competence of the National Assembly) has been consolidated, or has been created afresh following wholesale reform. This should usually be accompanied by a process of rationalisation of subordinate legislation made under the primary legislation. The existing hierarchy within, and delineation between, legislative instruments (primary and secondary legislation, and guidance or other similar documents made under the Acts or subordinate legislation) would remain. All the legislation within a Code will be made in both English and in Welsh.

[11] Each programme must also include activities intended to promote awareness and understanding of Welsh law, and facilitate use of the Welsh language. Programmes may also include proposed activities that may be undertaken in collaboration with the Law Commission, or activities of any other kind the Welsh Ministers and the Counsel General consider appropriate. See sections 2(3) and (4) of the 2019 Act.

[12] See paragraphs 23 and 24.

Therefore a Code would not (generally) be one legislative instrument but rather a collection of enactments under a unifying overarching title. Those enactments which make up the Code on any particular subject would be made available together. Similarly these enactments will remain the means by which the law is formally articulated. The Code is not intended to be a legal instrument in its own right but rather a means of collating and publishing the law more effectively.

85. This Chapter is intended to provide further information on the Government's intentions for the codification of Welsh law.

Purpose of codification

86. Codification is a process intended to bring order to the statute book. It begins by classifying existing legislation so that it is organised by reference to its subject matter; this is in part why the proposed taxonomy discussed above is important. However this will not in itself tackle the issues of inaccessibility caused by the sheer volume of legislation and the way that legislation has been amended, re-amended and re-made over time.

87. Consolidation (and projects that involve legislating to bring about wholesale reform) would bring order based on that classification. As discussed above, this involves rationalising all existing legislation on a topic into a new Act and accompanying subordinate legislation.

88. Against this background of classification and consolidation of the law in Wales, we will employ two connected but separate concepts:

    a. a "**Code**" is the label we will use to describe legislation that has been classified under a particular topic, for example for a "Housing Code" or a "Public Health Code". In this guise it is essentially a publication tool and we should stress that a Code will not be a formal legal instrument in its own right. We use the term 'Code' as the term for a collection of enactments on a particular subject – it is not intended to have a separate legal status to those enactments;

    b. but **codification** does involve formality in the sense that it also refers to the process of maintaining the structure of the law. As part of the process of enacting comprehensive legislation on a topic (be that by consolidation or wholesale reform), an Act may be designated as the "principal" primary legislation on a particular topic. Our intention is that the structure of this principal legislation should be retained in so far as is practical. The Government proposes (in line with recommendations of the Law Commission) that designation in this way should be recognised within the Senedd's Standing Orders such that any proposal to change the legislation which

departs from the structure (in other words, retaining the "principal" legislation as the main or core piece of legislation on a subject) would need to be justified and agreed (see below).

Maintaining the structure of Codes

89. The law is constantly evolving and must, even after it has been first consolidated, be revisited periodically to ensure that it remains well ordered and accessible. We therefore need to find ways to ensure that the benefits of having the law on a topic in one place are maintained when, inevitably, legislative changes are needed or required.

90. Protections can, with the agreement of the Senedd, be attached to the core or main pieces of legislation on a subject matter. Codification would involve an Act of the Senedd comprehensively setting out the law, or at least the fundamental elements of the law, in a specific subject area – either through consolidation or wholesale reform (potentially with elements of restatement) – and that Act being designated as a 'principal Act'[13].

91. We propose that the designation of legislation as a 'principal Act' brings with it a certain degree of procedural protection in Standing Orders. This would relate not to the content of the Act (which must be open to change in the normal way) but to the place of that Act within the overarching structure of the statute book. Our intention is that amending the law in any subject area for which there is a principal Act should have to be done by amending the principal Act itself, or by replacing the principal Act with another principal Act so that the structure of the statute book as a whole is maintained. Having consolidated or reformed the law, under an agreed subject classification, into a principal Act, any subsequent departure from the use of one Act as the main repository of the legislation on the subject would have to be justified by the Member in Charge and subject to scrutiny by the Senedd.

92. As a general rule, therefore, codification means that changes to primary legislation on a particular subject must be made by amending the principal Act on that subject. Where, over time, a principal Act has been amended extensively on a number of occasions, there will be a need to consolidate (or re-consolidate) and in so doing create a new principal Act. Similarly a more fundamental reform of the law on that topic would normally be done by replacing the principal Act on the topic with another, different, principal Act.

93. Maintaining primary legislation in this way would also help reduce proliferation of subordinate legislation (which of course is made under the primary legislation).

[13] This term is adopted for the purposes of this paper; the final term will be a matter for the Senedd if the approach of using Standing Orders to bring a level of protection to the codified law is adopted.

However, there remains a need to prevent the creation of multiple statutory instruments being made under the same power. In theory the notion of “principal” legislation could also be used in some circumstances, however there are other, probably more straightforward, means of achieving the goal. One option under consideration is that instead of changing the law by amending a statutory instrument using another statutory instrument (thus creating two, and then more each time amendments are made), the change is achieved by remaking the original statutory instrument in its entirety but with amendments made to it. Although, this would require a change to the procedures in standing orders, only the amendments to the statutory instrument should be subject to scrutiny.

94. We propose also that standard practice should be for only one set of regulations to be in force at any time under any one power to make regulations, or similarly only one set of regulations in force under a combination of powers to make regulations where this is possible. This would require a long term initiative to rationalise existing subordinate legislation to accompany consolidation of primarily legislation. However, powers to make subordinate legislation can often be used for different purposes, and there may be circumstances in which using different regulations using the same power would be more accessible.

95. Codification is an issue that requires further collaboration with the Senedd and a more detailed assessment of any complications that may arise.

96. However, we hope the general approach is clear – a “Code” is shorthand, used for publication purposes, for the collection of legislation that is a comprehensive expression of the law on a particular topic; while “codification” refers primarily to publishing the law in accordance with an ordered structure as well as a process for maintaining that structure, once order has been achieved.

Designation of legislation

97. The process referred to above is based on the designation of legislation as the “principal” enactment on a particular subject – that subject having been established by reference to the classification exercise that would precede it. This would be done by the proposer of the legislation including a provision within it specifying that the legislation is to be a ‘principal Act’. For Bills this would the Member in Charge of the Bill including, probably within the section setting out the short title of the Bill, a provision stating that the Bill is to be the ‘principal Act’ on the subject matter of the Bill. This is also something that we may wish to do retrospectively by promoting a bill to amend an Act that already exists in order to designate it as the principal Act on a subject.

98. Since it is for the Senedd to pass a Bill that is proposed to become a principal Act, the final decision on whether or not legislation forms part of a Code will always a matter for the Senedd rather than the Government.

99. The process envisaged means that the designation as a principal Act will exist within individual enactments, rather than as a list on a formal register or in a legal instrument.

100. It should be borne in mind that Bills will continue to be proposed by the Government which are *not* designed to be 'principal' legislation of a Code. This situation may arise for a number of reasons – most likely this would happen when the subject being dealt with in the proposed legislation has not yet been comprehensively consolidated, or it is legislation amending UK Government Acts.

Legislation on a codified subject which is not part of the Code

101. The value of a Code is its comprehensive nature, as it will be the main source of law on a subject for most users. Ideally all legislation on the statute book would form part of a Code.

102. But we recognise that even after Codes have been created across devolved subject areas, there will be Welsh legislation that will fall outside the Codes. This will include legislation making amendments to law applicable in England that are consequential upon the creation of Codes in Wales (which we intend to make separately) and legislation on cross-cutting subjects.

103. It should also be recognised that the process of codification can only apply to matters that fall within the legislative competence of the Senedd. This will be a very significant constraint. This is first of all because the complexity and narrowness of the Welsh system will slow the process down due to the need to analyse competence and deal with cross-border issues. And secondly the devolution boundary will often cut across the natural subject demarcation of legislation – in other words a Code will at times not be as comprehensive an expression of the law as we would wish because of the competence constraints.

104. Finally we also intend to take action (as part of the regular programmes to improve the accessibility of Welsh law) to address legislation that no longer needs to be on the statute book and to make use of the new power in section 38 of the Legislation (Wales) Act 2019 which provides as follows:

> *Where a provision in any legislation to which this section applies describes a date or time by reference to the coming into force of an enactment or the occurrence of any other event, the Welsh Ministers may by regulations amend the provision so that it refers to the actual date or time (once known).*

Question 4: Do you agree with the Welsh Government's vision and proposed approach for codification of Welsh law?

Chapter 5: Communication and clarification of Welsh law

105. The processes described so far in this paper are legal ones. This isn't surprising given that we are talking about the way in which we organise the law. However, modern communication techniques and the expectations of users of legislation mean that the law itself is now routinely supplemented by additional information that helps to clarify the impact and meaning of the law. This is particularly so in respect of legislation (rather than the common law), which is the focus of our work.

106. The additional communication is either provided by the state, by third sector organisations such as advice clinics or by the private sector (mainly lawyers and commercial publishers).

107. It has been a regular practice of government for some time to issue guidance on the practical effect of legislation. In doing so the focus, generally, is on ensuring that the policy implemented by the legislation is fully met. Although the guidance may also provide helpful explanation, this is not its primary purpose. The Explanatory Notes to an Act or a Statutory Instrument, as the name suggests, do seek to explain the content of legislation. However, these Notes tend to be technical rather than practical in focus and their quality and usefulness varies. They are also a relatively recent phenomenon.

108. In practice, therefore, explanation, clarification and more general information about changes in the law has historically been something done by advice agencies, by lawyers or by commercial publishers. It is clear that there is a demand for services that help citizens and lawyers to better understand the law, but the Welsh Government is aware that the demand is not always being met. There are different reasons for this, including cuts in funding for advice agencies and the increasing unavailability of legal aid. It also appears that commercial publishers think that the market for books, encyclopaedias and journals on Welsh law is insufficiently large to be commercially viable.

109. Historically, commercial publishers have had a surprisingly important role in providing information about the law in the UK. 'Halsbury's Laws' for example was first published in 1907 and 'Halsbury's Statutes' in 1929. Lawyers have long relied on such services to ensure that they acquire and maintain sufficient understanding of the law. This perhaps explains why developing a free to access, comprehensive and up-to-date database of legislation that is available online in the UK has not been fully achieved. While many (if not most) Commonwealth jurisdictions achieved this 20 years or more ago, progress in developing the UK's 'Statute Law Database' stalled and the only free to use database in the UK (legislation.gov.uk) is still not fully up do date.

110. The Welsh Government is conscious, therefore, of the need to step in and provide more information about Welsh law. It is partly for this reason that the Legislation (Wales) Act 2019 requires that programmes to improve the accessibility of Welsh law include activities to *"promote awareness and understanding of Welsh law".*

111. The Welsh Government has developed a website called *Cyfraith Cymru / Law Wales* to provide commentary and explanatory narrative about Welsh law. It is, however, a work in progress and much more needs to be done to make it comprehensive. Further developing the explanatory content of the website is one of the Government's priorities and the website will also play an important role in the process of codifying legislation outlined above. We envisage that the site will be used to bring together all "principal" legislation that forms part of a Code. In this way the "Code" would be an easy to navigate "gateway" to the underlying legislation that would continue to be formally published by The National Archives on legislation.gov.uk.

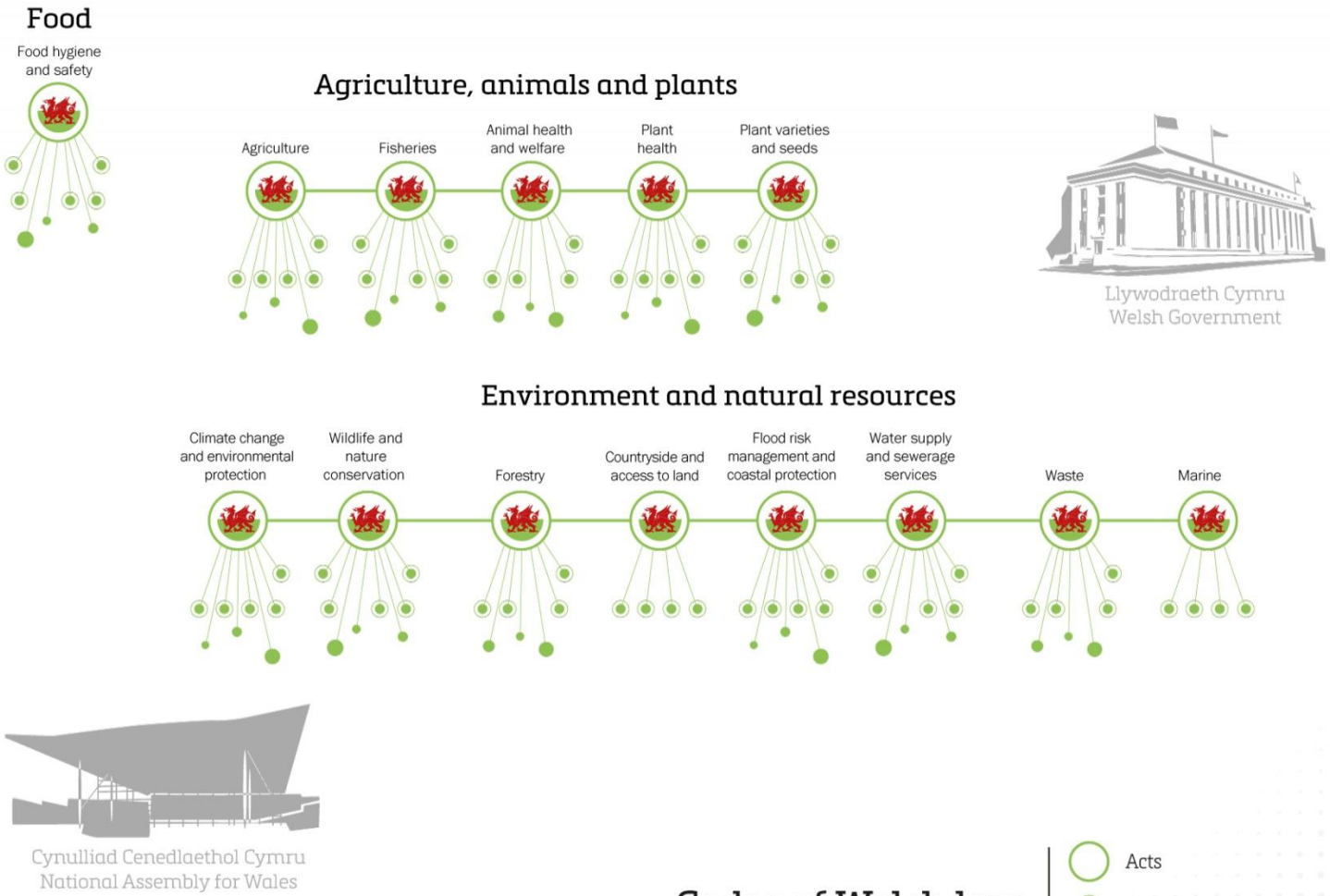
112. Explanatory content would then sit alongside the Codes, providing clarification and commentary on the effect of the legislation. Developing such explanatory content is, however, an enormous task and the Government believes that this should be a collaborative exercise. We hope, therefore, that lawyers, legal academics and other members of civic society in Wales will be willing to contribute.

113. To supplement this, we have also begun to investigate how emerging technologies such as machine reading techniques and artificial intelligence could assist. In the long run there is potential for legislation to be developed not only in Welsh and English but also in computer code, which in turn would allow for relatively easy development of tools to assist users of legislation. Although this is an exciting area, we should, however, stress that work in this area is in the very early stages across the Commonwealth and is not expected to be a realistic part of the solution for some time.

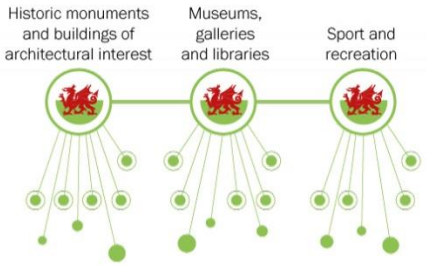
114. In developing material to help people understand the law we are, naturally, keen to understand what users of legislation and those in need of advice would like to have.

Question 5: What activities could the Welsh Government undertake or support that would help you or others to better understand Welsh law?

Annex A

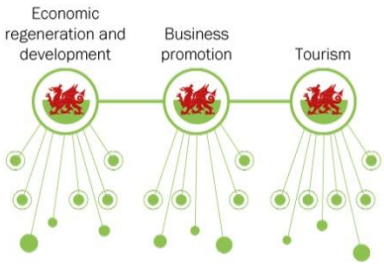

Food
Food hygiene and safety
Agriculture, animals and plants
Agriculture
Fisheries
Animal health and welfare
Plant health
Plant varieties and seeds
Llywodraeth Cymru
Welsh Government
Environment and natural resources
Climate change and environmental protection
Wildlife and nature conservation
Forestry
Countryside and access to land
Flood risk management and coastal protection
Water supply and sewerage services
Waste
Marine
Cynulliad Cenedlaethol Cymru
National Assembly for Wales
Codes of Welsh law
Acts
Statutory Instruments
Guidance

Culture, sport and historic environment

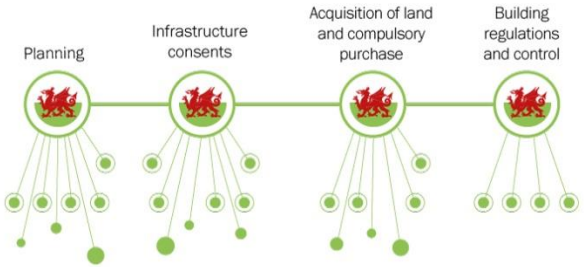


Llywodraeth Cymru
Welsh Government

Economic development and tourism

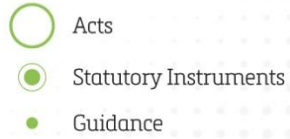


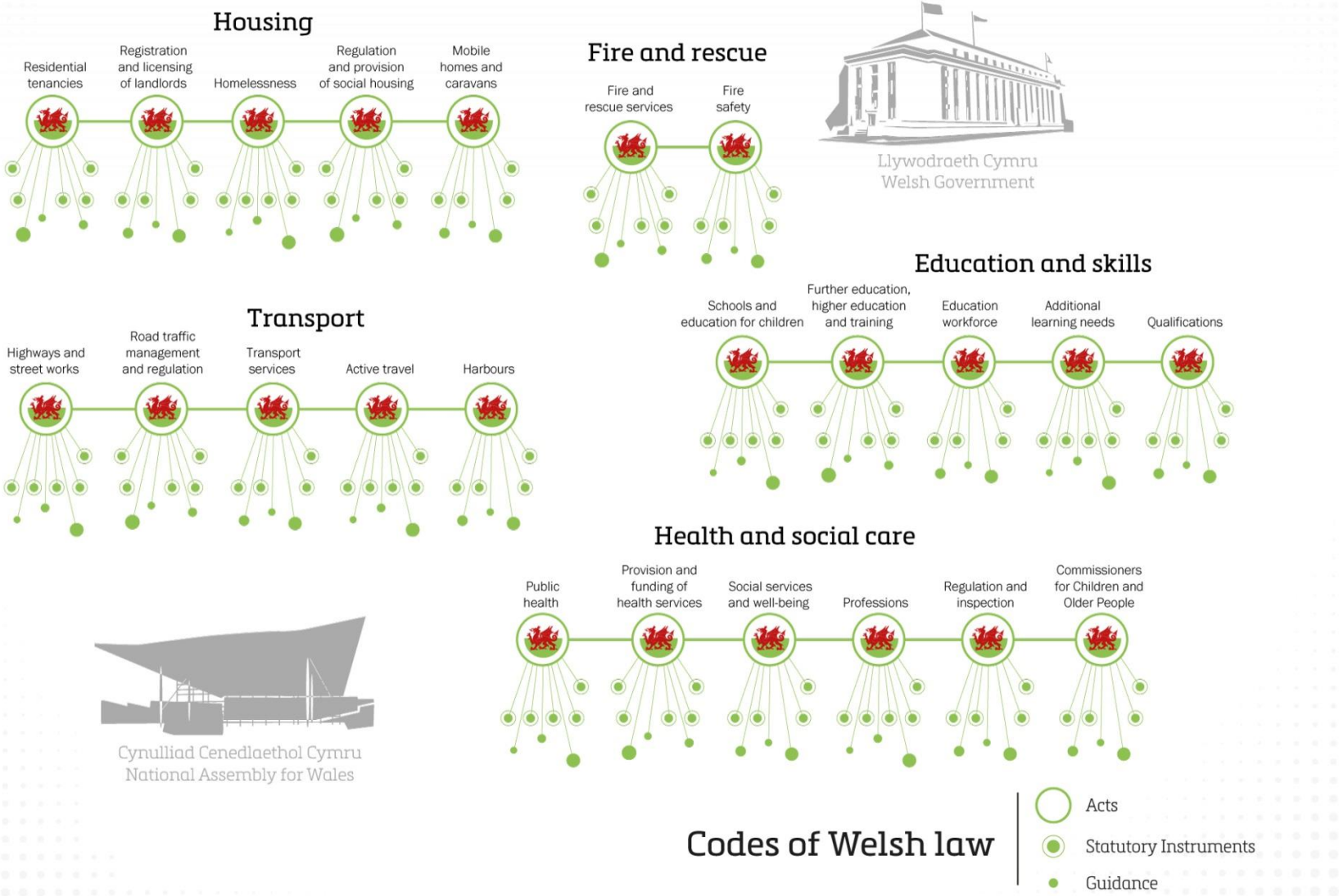
Planning, building and land

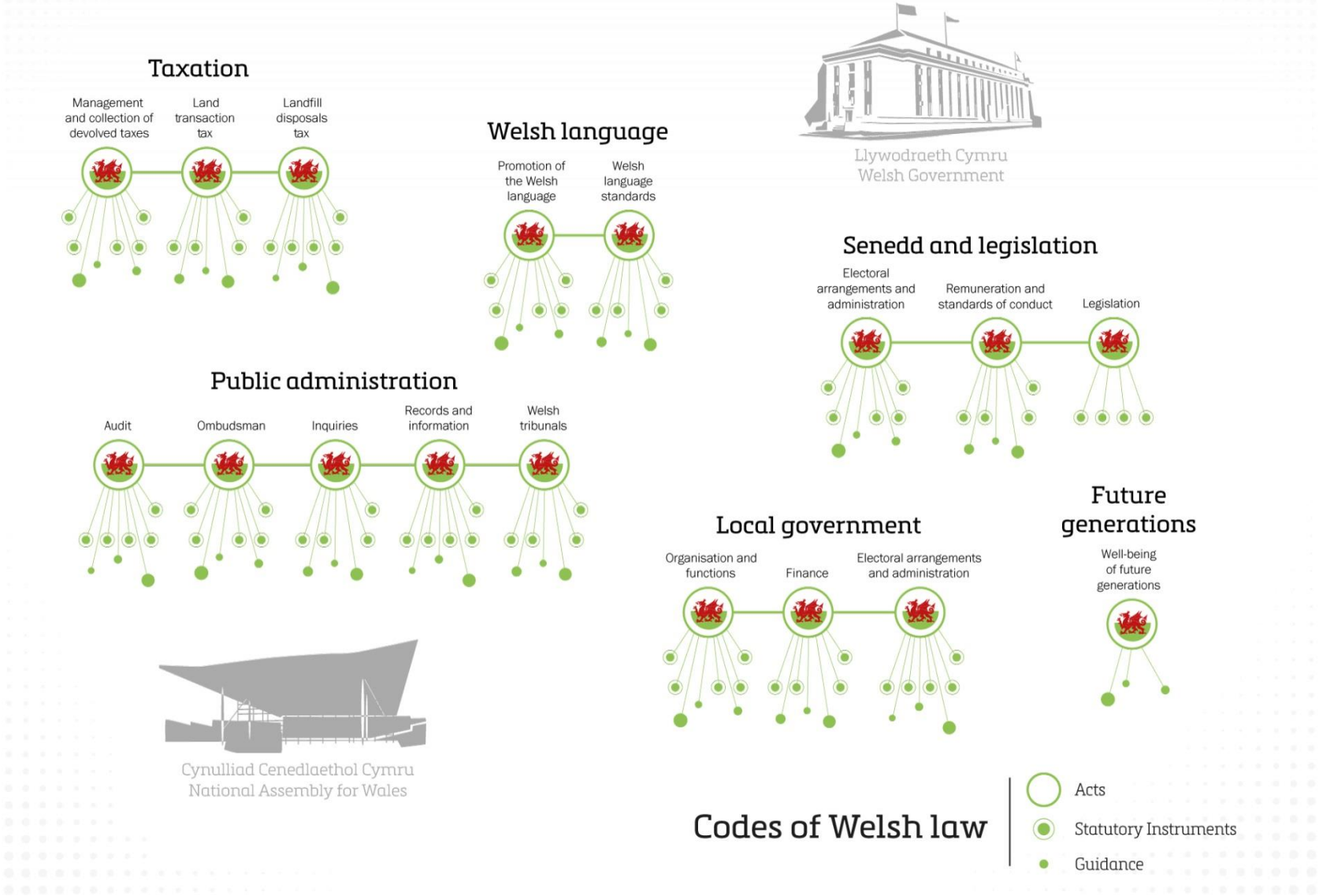


Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Codes of Welsh law




Housing
Residential tenancies
Registration and licensing of landlords
Homelessness
Regulation and provision of social housing
Mobile homes and caravans
Fire and rescue
Fire and rescue services
Fire safety
Llywodraeth Cymru
Welsh Government
Education and skills
Schools and education for children
Further education, higher education and training
Education workforce
Additional learning needs
Qualifications
Transport
Highways and street works
Road traffic management and regulation
Transport services
Active travel
Harbours
Health and social care
Public health
Provision and funding of health services
Social services and well-being
Professions
Regulation and inspection
Commissioners for Children and Older People
Cynulliad Cenedlaethol Cymru
National Assembly for Wales
Codes of Welsh law
Acts
Statutory Instruments
Guidance


Taxation
Management and collection of devolved taxes
Land transaction tax
Landfill disposals tax
Welsh language
Promotion of the Welsh language
Welsh language standards
Llywodraeth Cymru
Welsh Government
Senedd and legislation
Electoral arrangements and administration
Remuneration and standards of conduct
Legislation
Public administration
Audit
Ombudsman
Inquiries
Records and information
Welsh tribunals
Local government
Organisation and functions
Finance
Electoral arrangements and administration
Future generations
Well-being of future generations
Cynulliad Cenedlaethol Cymru
National Assembly for Wales
Codes of Welsh law
Acts
Statutory Instruments
Guidance

Annex B

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Agriculture, animals and plants	
Agriculture Fisheries Animal health and welfare Plant health Plant varieties and seeds	Agriculture Acts 1967 to 1993; Slaughter of Poultry Act 1967; Sea Fisheries (Shellfish) Act 1967; Salmon and Freshwater Fisheries Act 1975; Plant Health Act 1967; Plant Varieties Act 1997; Animal Health Acts 1981 and 2002; Animal Welfare Act 2006; Red Meat Industry (Wales) Measure 2010; Agricultural Sector (Wales) Act 2014; Control of Horses (Wales) Act 2014.
Food	
Food hygiene and safety	Food Safety Act 1990; Food Standards Act 1999; Food Hygiene Rating (Wales) Act 2013.
Environment and natural resources	
Climate change and environmental protection (including pollution control) Wildlife and nature conservation (including biodiversity and habitats)	Environmental Protection Act 1990; Planning (Hazardous Substances) Act 1990; Environment Act 1995; Pollution Prevention and Control Act 1999; Waste and Emissions Trading Act 2003; Clean Neighbourhoods and Environment Act 2005; National Parks and Access to the Countryside Act 1949; Forestry Act 1967; Countryside Act 1968; Conservation of Seals Act 1970; Wildlife and Countryside Act 1981; Deer Act 1991; Protection of Badgers Act 1992; Commons Acts 1899 and 2006; Commons Registration Act

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Forestry Countryside and access to land Flood risk management and coastal protection Water supply and sewerage services Waste Marine	1965; Countryside and Rights of Way Act 2000; Coast Protection Act 1949; Reservoirs Act 1975; Land Drainage Act 1991; Water Industry Act 1991; Water Resources Act 1991; Flood and Water Management Act 2010; Waters Acts 2003 and 2014; Marine and Coastal Access Act 2009 (parts); Waste (Wales) Measure 2010; Environment (Wales) Act 2016.
Planning, building and land	
Planning Infrastructure consents Acquisition of land and compulsory purchase Building regulations and control	Town and Country Planning Act 1990; Planning (Consequential Provisions) Act 1990; Planning and Compulsory Purchase Act 2004; Planning Act 2008; Planning (Wales) Act 2015; Defective Premises Act 1972; Building Act 1984; Domestic Fire Safety (Wales) Measure 2011; Compulsory Purchase Act 1965; Compulsory Purchase (Vesting Declarations) Act 1981; Acquisition of Land Act 1981; Housing and Planning Act 2016; Neighbourhood Planning Act 2017.

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Culture, sport and historic environment	
Historic monuments and buildings of architectural interest Museums, galleries and libraries Sport and recreation	Protection of Wrecks Act 1973; Ancient Monuments and Archaeological Areas Act 1979; Planning (Listed Buildings) Act 1990; Public Libraries and Museums Act 1964; Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010; Historic Environment (Wales) Act 2016.
Economic development and tourism	
Economic regeneration and development Business promotion Tourism	Development of Tourism Act 1969; Welsh Development Agency Act 1975.
Education and skills	
Schools and education for children Further education, higher education and training Education workforce Additional learning needs	Education Reform Act 1988; Further and Higher Education Act 1992; Education Acts 1996, 1997, 2002 and 2005; Learning and Skills Act 2000; Apprenticeships, Skills, Children and Learning Act 2009 (part); Learning and Skills (Wales) Measure 2009; Healthy Eating in Schools (Wales) Measure 2009; Education (Wales) Measures 2009 and 2011; School Standards and Organisation (Wales) Act 2013; Education (Wales) Act 2014; Higher Education (Wales) Act 2015; Qualifications Wales Act 2015; Additional Learning Needs and Education Tribunal (Wales) Act 2018.

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Qualifications	
Fire and rescue	
Fire and rescue services Fire safety	Fire and Rescue Services Act 2004; Regulatory Reform (Fire Safety) Order 2005.
Health and social care	
Public health Provision and funding of health services Social services and well-being Professions Regulation and inspection of health and social care Commissioners for Children and Older People	Mental Health Acts 1983 and 2007; Access to Health Records Act 1990; Tobacco Advertising and Promotion Act 2002; Health Act 2006; National Health Service (Wales) Act 2006; NHS Redress (Wales) Measure 2008; Mental Health (Wales) Measure 2010; Human Transplantation (Wales) Act 2013; National Health Service Finance (Wales) Act 2014; Nurse Staffing Levels (Wales) Act 2016; Public Health (Wales) Act 2017; Public Health (Minimum Price for Alcohol) (Wales) Act 2018; Children Acts 1989 and 2004; Care Standards Act 2000; Health and Social Care (Community Health and Standards) Act 2003; Commissioner for Older People (Wales) Act 2006; Children and Families (Wales) Measure 2010; Social Services and Well-being (Wales) Act 2014; Regulation and Inspection of Social Care (Wales) Act 2016.
Housing	
Domestic tenancies	

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Registration and licensing of landlords (including HMOs) Homelessness Regulation and provision of social housing Mobile homes and caravans	Rent Act 1977; Protection from Eviction Act 1977; Housing Acts 1985, 1988, 1996 and 2004; Housing Associations Act 1985; Housing Grants, Construction and Regeneration Act 1996; Homelessness Act 2002; Housing (Wales) Measure 2011; Mobile Homes (Wales) Act 2013; Housing (Wales) Act 2014; Renting Homes (Wales) Act 2016; Abolition of the Right to Buy and Associated Rights (Wales) Act 2018; Regulation of Registered Social Landlords (Wales) Act 2018
Transport	
Highways and street works Road traffic management and regulation Transport services (including buses and taxis) Active travel Harbours	Harbours Act 1964; Transport Acts 1968-2000; Chronically Sick and Disabled Persons Act 1970; Highways Act 1980; Cycle Tracks Act 1984; Road Traffic Regulation Act 1984; New Roads and Street Works Act 1991; Road Traffic Reduction Act 1997; Local Transport Act 2008; Active Travel (Wales) Act 2013.
Local government	
Local government organisation and functions	Local Government Acts 1972, 1986, 2000 and 2003; Local Authorities (Land) Act 1963; Local Authorities (Goods and Services) Act 1970; Local Government (Miscellaneous

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Local government finance Local government electoral arrangements and administration	Provisions) Act 1982; Local Government and Housing Act 1989; Local Government (Wales) Acts 1994 and 2015; Local Government (Contracts) Act 1997; Local Government (Wales) Measures 2009 and 2011; Local Government Byelaws (Wales) Act 2012; Local Government (Democracy) (Wales) Act 2013; Local Government Finance Acts 1988 and 1992.
Public administration	
Audit Ombudsman Inquiries Records and information Welsh tribunals	Public Audit (Wales) Acts 2004 and 2013; Public Services Ombudsman (Wales) Act 2005; Inquiries Act 2005; Freedom of Information Act 2000; provisions in various Acts establishing Welsh tribunals.
Senedd and legislation	
Senedd electoral arrangements and administration Remuneration and standards of conduct of Members of the Senedd Legislation (making, meaning, publishing)	Government of Wales Act 2006; National Assembly for Wales Commissioner for Standards Measure 2009; National Assembly for Wales (Remuneration) Measure 2010; Statutory Instruments Act 1946; Legislation (Wales) Bill 2018.

Proposed Code and topics	*Examples of existing legislation which could be included in the Code*
Taxation	
Management and collection of devolved taxes Land transaction tax Landfill disposals tax	Tax Collection and Management (Wales) Act 2016; Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017; Landfill Disposals Tax (Wales) Act 2017.
Welsh language	
Promotion of the Welsh language Welsh language standards	Welsh Language Act 1993; Welsh Language (Wales) Measure 2011.
Future generations	
Well-being of future generations	Well-being of Future Generations (Wales) Act 2015

Annex C: Consultation response form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Question 1: With reference to the draft taxonomy in Annex 1, do you agree with the suggested structure of subjects and sub-topics?

Question 2: Do you have any suggestions for improving this draft taxonomy?

Question 3: What specific area or areas of devolved law do you think are most in need of consolidation, and why?

Question 4: Do you agree with the Welsh Government's vision and proposed approach for codification of Welsh law?

Question 5: What activities could the Welsh Government undertake or support that would help you or others to better understand Welsh law?

Question 6: We would like to know your views on the effects that the classification, consolidation and codification of Welsh law would have on the Welsh language, specifically on opportunities for people to use Welsh and on 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 7: Please also explain how you believe the classification, consolidation and codification of Welsh law could be formulated or changed so as to have:

- 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
- 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.

Question 8: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

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: ☐

Agenda Item 3

Statutory Instruments with Clear Reports

18 November 2019

SL(5)469 – Code of Practice on the exercise of social services functions in relation to Advocacy under Part 10 and related parts of the Social Services and Well-being (Wales) Act 2014

Procedure: Negative

The Code sets out the requirements for local authorities to:

(a) ensure that access to advocacy services and support is available to enable individuals to engage and participate when local authorities are exercising statutory duties in relation to them, and

(b) to arrange an Independent Professional Advocate to facilitate the involvement of individuals in certain circumstances.

The Code states that it also sets out:

- people's choice to have someone to act as an advocate for them,
- a clear framework to support and empower individuals to make positive informed choices,
- a clear recognition of the benefits of advocacy,
- the range of advocacy available to people,
- the key points when people's need for advocacy must be assessed,
- when independent advocacy must be provided,
- the circumstances that impact on peoples' need for advocacy,
- the circumstances when it is inappropriate for certain people to advocate,
- the arrangements for publicising advocacy services and
- charging for advocacy services.

Procedure

A draft of the Code must be laid before the Assembly. If, within 40 days (excluding any time when the Assembly is dissolved or is in recess for more than 4 days) of the draft being laid, the Assembly resolves not to approve the draft Code then the Welsh Ministers must not issue the Code.

If no such resolution is made, the Welsh Ministers must issue the Code (in the form of the draft) and the Code comes into force on a day specified in an order made by the Welsh Ministers.

Parent Act: Social Services and Well-being (Wales) Act 2014

Date Made:

Date Laid: 06 November 2019

Coming into force date:

SL(5)467 – The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

Background and Purpose

This Order (the '2019 Order') amends article 21 of The Sustainable Drainage (Enforcement) (Wales) Order 2018 (S.I. 2018/1182) (W. 241) (the '2018 Order") to provide for an unlimited fine where an offence of failure to comply with a notice, (as set out in article 21) is committed.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3 (ii) (that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

Article 21 of the 2018 Regulations provides for an offence of failure to comply with a notice. This may relate to a temporary stop notice, an enforcement notice, or a stop notice. This is, currently, subject to a fine not exceeding £20,000. The 2019 Order seeks to amend this to provide for an unlimited fine in relation to this offence.

Article 22 of the 2018 Regulations provides for an offence of obstruction. This is subject to a fine not exceeding level 3 on the standard scale. The 2019 Order does not seek to amend the amount of the fine in article 22.

The Explanatory Memorandum is not as clear as it might be. In paragraph 4.1 it states that article 21 limits the fines that can be passed in a case "for the offence of failing to comply with a temporary stop notice, enforcement notice or stop notice to a maximum of £20,000". This is correct and a clear explanation. However, it states at paragraph 4.3 that the 2019 Order will amend the 2018 Order to "…provide for an unlimited fine for each offence set out within that Order…". However, no changes have been made to the fine in respect of the article 22 offence, and so the changes will only provide an unlimited fine for each offence set out within article 21 of the 2018 Order. As such, this explanation could mislead the reader into thinking that an article 22 offence will now be subject to an unlimited fine.

The Explanatory Note to the 2019 Order also states that it will amend the 2018 Order "…to provide for an unlimited fine for each offence set out within that Order…" without noting that the amendments relate to an offence under article 21 only.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

A government response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 November 2019

Draft Order laid before the National Assembly for Wales under under paragraph 14(5)(b) of Schedule 3 to the Flood and Water Management Act 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

WATER INDUSTRY, WALES

The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Sustainable Drainage (Enforcement) (Wales) Order 2018 (S.I. 2018/1182 (W. 241)) in order to provide for an unlimited fine for each offence set out within that Order.

The Welsh Ministers' Code of Practice on the carrying out of regulatory impact assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

Draft Order laid before the National Assembly for Wales under paragraph 14(5)(b) of Schedule 3 to the Flood and Water Management Act 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

WATER INDUSTRY, WALES

The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

Made	***
Coming into force	***

The Welsh Ministers, in exercise of the powers conferred by section 32 of, and paragraph 14 of Schedule 3 to, the Flood and Water Management Act 2010(**1**), make the following Order.

In accordance with paragraph 14(5)(b) of Schedule 3 to that Act, a draft of this instrument has been laid before and approved by, a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of this Order is the Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019.

(2) This Order comes into force on ***.

Amendment of the Sustainable Drainage (Enforcement) (Wales) Order 2018

2. In article 21 of the Sustainable Drainage (Enforcement) (Wales) Order 2018(**2**), omit "not exceeding £20,000".

Name

(**1**) 2010 c. 29. The Welsh Ministers are the Minister in relation to drainage systems in Wales by virtue of paragraph 4(a) of Schedule 3. There are amendments to Schedule 3, none of which are relevant to this Order.

(**2**) S.I. 2018/1182 (W. 241).

Minister for Environment, Energy and Rural Affairs,
one of the Welsh Ministers
Date

Explanatory Memorandum to The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
5 November 2019

1. Description

1.1 Schedule 3 of the Flood and Water Management Act 2010 (the 2010 Act) relates to provisions for sustainable drainage (SuDS). These include the establishment of a SuDS Approving Body (SAB) to be set up within the local authority alongside their lead local flood authority (LLFA) duty. SAB approval will be required before construction of drainage systems can commence on new and redeveloped sites.

1.2 The Sustainable Drainage (Enforcement) (Wales) Order 2018 ("the 2018 Order") provides for the enforcement of breach of the approval required ("the requirement for approval") under paragraph 7(1) of Schedule 3 to the 2010 Act in relation to drainage systems for construction work.

1.3 Article 21 of the 2018 Order provides for an offence of failure to comply with a temporary stop notice, enforcement notice or stop notice.

1.4 The Sustainable Drainage (Enforcement) (Wales) (Amendment) Order 2019 amends the financial limit of the fine on summary conviction in order to bring the offences into line with the availability of unlimited fines to Magistrates' Courts brought about by Legal Aid Sentencing and Punishment of Offenders Act 2012

2. **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 None.

3. **Legislative background**

3.1 This order is made exercising the powers conferred by sections 32 and 48(2) of, and paragraphs 4(a) and 14 of Schedule 3 to, the Flood and Water Management Act 2010.

3.2 In accordance with paragraph 14(5)(b) of Schedule 3 to that Act this instrument follows the Assembly's affirmative procedure.

4. **Purpose and intended effect of the legislation**

4.1 Article 21 of the 2018 Order limits the fines that can be passed in a summary case for the offence of failing to comply with a temporary stop notice, enforcement notice or stop notice to a maximum of £20,000.

4.2 The 2018 Order was drafted before s.85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) commenced but was not put into force until after the commencement and so was not caught by that provision. LASPO removed the upper limit on fines that Magistrates' Courts could pass for almost all offences.

4.3 In order to provide consistency with other offences of a similar nature, this Order amends The Sustainable Drainage (Enforcement) (Wales) Order 2018 in order to

provide for an unlimited fine for each offence set out within that Order. This amendment means the Magistrates' Court would be able to pass an unlimited fine and is consistent with the wording which led from the amendments to other legislation made by LASPO.

5. **Consultation**

5.1 As the Order provides a technical amendment which does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.

6. **Regulatory Impact Assessment (RIA)**

6.1 As a result of the negligible impact of the amendment to the 2018 Order on services in Wales, a regulatory impact assessment has not been undertaken.

7. **Competition Assessment**

7.1 Not applicable

8. **Post implementation review**

8.1 Not applicable

SL(5)468 – The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

Background and Purpose

These Regulations correct deficiencies in Welsh legislation which arise as a result of the UK's exit from the European Union. They ensure the statute book in Wales remains up to date and operable once the UK leaves the European Union.

This Committee considered the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 on 13 March 2019 – a report on those Regulations raised a number of technical points. The Welsh Government responded to this Committee's report on 25 March 2019 and in that response, the Welsh Government accepted that many of the issues raised by the Committee necessitated amendments, which are now made by these Regulations.

Procedure

Affirmative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. **Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**

   Regulation 2(6)(b) inserts a reference to Council Decision 2002/811/EC into regulation 17(2)(g) of the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 ("2002 Regulations"). Under regulation 17(2)(g) of the 2002 Regulations, as amended, an application for consent to market genetically modified organisms must contain a monitoring plan prepared in accordance with Annex VII of the Deliberate Release Directive, as read with the guidance notes set out in Council Decision 2002/811/EC.

   Amendments to relevant EU law referred to in these Regulations are made under the Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/90) (in respect of Council Decision 2002/812/EC, Council Decision 2002/813/EC and Commission Decision 2003/701/EC) and the Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/705) (in respect of Council Regulation 1829/2003). At the date of this report, there do not appear to be any amendments to deal with any defects and deficiencies under Council Decision 2002/811/EC, arising as a result of the United Kingdom's exit from the European Union.

   The guidance notes set out in Council Decision 2002/811/EC include reference to the Commission and Member States which do not appear to be relevant following the United Kingdom's exit from the European Union. Further, provisions are contained in Council Decision 2002/811/EC that are

similar to those contained in relevant EU law, but only the latter have been amended by the 2019 EU Exit Regulations referred to in the preceding paragraph.

It is acknowledged that Council Decision 2002/811/EC will apply not only in Wales and that the Secretary of State was responsible for making the 2019 EU Exit Regulations referred to in the preceding paragraph. It is further acknowledged that the equivalent England only SI contains a provision which refers to Decision 2002/811/EC.

An explanation is requested of why it is not necessary to amend Council Decision 2002/811/EC.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

1.1 References to the National Assembly for Wales

A number of the amendments made by regulation 2 have the effect that the 2002 Regulations will use two different names to refer to what is now the same legal person i.e. "the [former] National Assembly for Wales" and "the Welsh Ministers". All these references are to be interpreted as references to the Welsh Ministers by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006, However, that will not be immediately apparent to those seeking to understanding the legislation.

These Regulations provide consistency of reference within amended regulations and this improves the clarity of the law for those provisions. References to the National Assembly for Wales remain elsewhere in the 2002 Regulations, including to connected and adjacent provisions (for example regulations 23 and 24 of the 2002 Regulations) and the possibility of confusion therefore remains.

In our view, the Welsh Ministers have the vires to change all references from the National Assembly for Wales to the Welsh Ministers, where appropriate, under paragraph 21 of Schedule 7 to the EUWA, as such changes would be supplementary or incidental to provision made under paragraph 1(1) of Schedule 2 to the EUWA.

1.2 References to "shall"

A number of the amendments made by regulation 2 have the effect that the 2002 Regulations use both "shall" and "must".

These Regulations provide consistency of reference within amended regulations and this improves the clarity of the law for those provisions. References to "shall" remain elsewhere in the 2002 Regulations, including to connected and adjacent provisions (for example regulations 19 to 21 of the 2002 Regulations) and the possibility of confusion therefore exists.

In our view, the Welsh Ministers have the vires to change all references to "must", where appropriate, under paragraph 21 of Schedule 7 to the EUWA, as such changes would be supplementary or incidental to provision made under paragraph 1(1) of Schedule 2 to the EUWA.

1.3 Explanatory Memorandum

Paragraph 1.2 of the Explanatory Memorandum incorrectly states that the definition of exit day under the EUWA on 5 November 2019 was 11.00pm on 31 October 2019, although the paragraph does flag that the definition is likely to change in the near future.

The definition of exit day under EUWA was amended by the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations 2019/1423 on 30 October 2019.

Implications arising from exiting the European Union

These Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Government Response

A Government Response is required.

Legal Advisers
Constitutional and Legislative Affairs Committee
13 November 2019

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations revoke and remake with amendments Part 3 of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/379 (W. 94)) ("the 2019 Regulations").

These Regulations make amendments to subordinate legislation, which applies in relation to Wales, relating to the control and regulation of the deliberate release, placing on the market, and transboundary movement of genetically modified organisms.

Regulations 2 and 3 of these Regulations make various amendments to Welsh subordinate legislation in order to correct failures of retained EU law to operate effectively and other deficiencies arising from withdrawal from the European Union.

Regulation 4 revokes various provisions including Part 3 of the 2019 Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations.

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY INSTRUMENTS

2019 No. (W.)

EXITING THE EUROPEAN UNION, WALES

ENVIRONMENTAL PROTECTION, WALES

The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

Made ***

Coming into force in accordance with regulation 1(2) and (3)

The Welsh Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

In accordance with paragraph 4 of Schedule 2 to that Act, the Welsh Ministers have consulted with the Secretary of State.

(**1**) 2018 c. 16.

Title and commencement

1.—(1) The title of these Regulations is the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019.

(2) Regulations 1 and 4 come into force immediately before exit day.

(3) Regulations 2 and 3 come into force on exit day.

Amendments to the Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002

2.—(1) The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002(**1**) are amended as follows.

(2) In regulation 2(1)—

(a) omit the definition of "the Food and Feed Regulation" ("*y Rheoliad Bwyd a Bwyd Anifeiliaid*");

(b) for the definition of "approved product" ("*cynnyrch wedi'i gymeradwyo*") substitute—

""approved product" *("cynnyrch wedi'i gymeradwyo*") means—

(a) a product permitted to be marketed in Wales by—

(i) a consent granted by the Welsh Ministers under section 111(1) of the Act,

(ii) an authorisation under Council Regulation (EC) No 1829/2003 on genetically modified food and feed, or

(b) a pre-exit approved product;";

(c) omit the definition of "the Commission" ("*y Comisiwn*");

(d) omit the definition of "the Contained Use Directive" ("*y Gyfarwyddeb Defnydd Amgaeëdig*");

(e) in the appropriate place insert—

""pre-exit approved product" ("*cynnyrch wedi'i gymeradwyo cyn y diwrnod ymadael*") means a product which, immediately before exit day, was permitted to be marketed in Wales by—

(a) a consent granted in accordance with Article 15(3), 17(6) or 18(2) of the

(**1**) S.I. 2002/3188 (W. 304), amended by S.I. 2005/1913 (W. 156) and S.I. 2018/1216 (W. 249).

Deliberate Release Directive or Article 13(2) or (4) of the 1990 Directive, or

(b) an authorisation under Council Regulation (EC) No 1829/2003 on genetically modified food and feed,

and in respect of which the relevant consent or authorisation has not been withdrawn or otherwise become invalid;".

(3) In regulation 10, omit the words from "release is" to "or in which".

(4) In regulation 12(1)(d)—

(a) omit the words from ", in the format" to "Directive,";

(b) at the end, insert "in the relevant format set out in the Annex to Council Decision 2002/813/EC".

(5) In regulation 16—

(a) for paragraph (b) substitute—

"(b) genetically modified organisms are made available for activities regulated under the Genetically Modified Organisms (Contained Use) Regulations 2014(**1**);";

(b) omit paragraph (c);

(c) in paragraph (d) for ";" substitute "; or";

(d) for paragraph (e) substitute—

"(e) a genetically modified organism, which is contained in a medicinal product authorised under the Human Medicines Regulations 2012(**2**) or the Veterinary Medicines Regulations 2013(**3**), is marketed.";

(e) omit paragraph (g).

(6) In regulation 17(2)—

(a) in sub-paragraph (b)—

(i) for "European Union" substitute "United Kingdom";

(ii) omit the words from "or to another competent authority" to the end;

(b) in sub-paragraph (g), after "Directive" insert ", as read with the guidance notes set out in Council Decision 2002/811/EC,";

(c) in sub-paragraph (j), for the words from "established by the Commission" to the end,

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(**1**) S.I. 2014/1663.

(**2**) S.I. 2012/1916, amended by S.I. 2013/235, 2013/1855, 2013/2593, 2014/323, 2014/324, 2014/490, 2014/1878, 2015/178, 2015/259, 2015/354, 2015/903, 2015/1503, 2015/1862, 2015/1879, 2016/186, 2016/190, 2016/696, 2017/715, 2017/1322, 2018/199 and 2018/378.

(**3**) S.I. 2013/2033, amended by S.I. 2014/599 and 2018/761.

substitute "set out in the Annex to Council Decision 2002/812/EC".

(7) In regulation 21—

(a) omit paragraph (c);

(b) in paragraph (f), omit the words from "and any comments made" to the end.

(8) In regulation 22—

(a) in paragraph (3), omit "and shall ensure that its decision is communicated to the Commission";

(b) for paragraph (6) substitute—

"(6) Information submitted in accordance with paragraph (5) must be provided in the format set out in the Annex to Commission Decision 2003/701/EC."

(9) For regulation 24 substitute—

"Duties of the Welsh Ministers in relation to applications for consent to market genetically modified organisms

24.—(1) Following the receipt of an application for consent to market genetically modified organisms under section 111(1) of the Act the Welsh Ministers must—

(a) inform the applicant in writing of the date of receipt of the application;

(b) examine the application for its conformity with the requirements of the Act and of these Regulations and, if necessary, request the applicant to supply additional information pursuant to section 111(6) of the Act;

(c) before the end of a period of 90 days beginning with the day on which they received the application either—

(i) send to the applicant an assessment report prepared in accordance with Schedule 4 which indicates that the genetically modified organisms should be permitted to be marketed and under which conditions, or

(ii) refuse the application, stating reasons for their decision, supported by an assessment report prepared in accordance with Schedule 4 which indicates that the genetically modified organisms should not be marketed.

(2) The 90 day period prescribed in paragraph (1)(c) does not include any period beginning

with the day on which the Welsh Ministers give notice in writing under section 111(6) of the Act that further information in respect of the application is required and ending on the day on which that information is received by the Welsh Ministers.

(3) Where the assessment report referred to in paragraph (1)(c) indicates that the genetically modified organisms to which an application relates should be permitted to be marketed, the Welsh Ministers must invite any person, by means of a request placed on the register, to make representations on the assessment report, which must be received by the Welsh Ministers within a period of 30 days beginning with the day on which the request is placed on the register (which must not be earlier than the day on which the assessment report is placed on the registers under regulation 35(7A).”

(10) For regulation 25 substitute—

“Decisions by the Welsh Ministers on applications for consent to market genetically modified organisms

25.—(1) The Welsh Ministers must not grant an application for consent to market genetically modified organisms under section 111(1) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive.

(2) Where the Welsh Ministers invite representations on an assessment report relating to an application for consent to market genetically modified organisms—

(a) the Welsh Ministers must not determine whether to grant or refuse the application before the period for making representations under regulation 24(3) has ended and the Welsh Ministers have considered any representations made in accordance with that regulation;

(b) the Welsh Ministers must, within 105 days after the end of the period for making representations under regulation 24(3)—

(i) determine the application, and

(ii) notify the applicant in writing of the decision to grant or refuse the application, and the reasons for the decision.

(3) the period referred to in paragraph (2)(b) does not include any period beginning with the day on which the Welsh Ministers give notice in

writing under section 111(6) of the Act that further information in respect of the application is required and ending on the day on which that information is received by the Welsh Ministers.

(4) Subject to paragraphs (5) and (6), a consent to market genetically modified organisms may be given for a maximum period of ten years beginning with the day on which the Welsh Ministers grant a consent under section 111 of the Act.

(5) The period of the first consent to market—

(a) a genetically modified organism, or

(b) a progeny of that genetically modified organism contained in a plant variety where the plant variety is intended only for the marketing of its seeds,

must end at the latest ten years after the date of the first inclusion of the first plant variety containing the genetically modified organism on a National List in accordance with regulation 3 of the Seeds (National Lists of Varieties) Regulations 2001(**1**).

(6) For the purpose of granting consent to market a genetically modified organism contained in forest reproductive material, the period of the first consent shall end at the latest ten years after the specified date.

(7) In paragraph (6), "the specified date" means the date of the first inclusion of basic material containing the genetically modified organism on the National Register in accordance with regulations 6 and 7 of the Forest Reproductive Material (Great Britain) Regulations 2002(**2**)."

(11) In regulation 26, omit paragraphs (1)(d) and (2).

(12) In regulation 27—

(a) for paragraph (1) substitute—

"(1) The Welsh Ministers must not grant, under section 111(1), of the Act an application for the renewal of a consent to market genetically modified organisms as it relates to the protection of human health without the agreement of the Health and Safety Executive.";

(b) for paragraph (2) substitute—

"(2) The Welsh Ministers must communicate a decision on an application to renew a consent to market genetically modified organisms to the applicant as soon as possible and must include in any refusal to renew a consent the reasons for that decision."

(**1**) S.I. 2001/3510.
(**2**) S.I. 2002/3026.

(13) In regulation 29(f), for the words from "the reports of" to "Member States" substitute "monitoring reports in the relevant format set out in the Annexes to Commission Decision 2009/770/EC".

(14) For regulation 32 substitute—

"**Variation or revocation of a consent to market**

32.—(1) The Welsh Ministers may only vary or revoke a consent to market genetically modified organisms under section 111(10) of the Act without the agreement of the holder of the consent where new information has become available which the Welsh Ministers consider would affect the assessment of the risk of damage being caused to the environment by the release.

(2) The Welsh Ministers must not revoke or vary a consent to market genetically modified organisms under section 111(10) of the Act as it relates to the protection of human health without the agreement of the Health and Safety Executive."

(15) In regulation 33, omit paragraphs (3) to (5).

(16) In regulation 35, for paragraphs (1) to (9) substitute—

"(1) The register must contain the particulars set out in paragraphs (2) to (10).

(2) In relation to a prohibition notice served by the Welsh Ministers under section 110 of the Act—

(a) the name and address of the person on whom the notice is served;

(b) the description of the genetically modified organisms in relation to which the notice is served;

(c) the location at which the genetically modified organisms are proposed to be released;

(d) the purpose for which the genetically modified organisms are proposed to be released or marketed;

(e) the reason for the service of the notice;

(f) any date specified in the notice as the date on which the prohibition is to take effect.

(3) Subject to paragraph (4), in relation to an application for a consent under section 111(1) of the Act—

(a) the name and address of the applicant;

(b) a general description of the genetically modified organisms in relation to which the application is being made;

(c) the location at which the genetically modified organisms are proposed to be released, to the extent that this information is notified to the Welsh Ministers;

(d) the purpose for which the genetically modified organisms are proposed to be released (including any future use to which they are intended to be put) or, in relation to a consent to market, the purpose for which they will be marketed;

(e) the intended dates of the release;

(f) the environment risk assessment;

(g) the methods and plans for monitoring the genetically modified organisms and for responding to an emergency;

(h) a summary of any advice the Welsh Ministers have received from the Advisory Committee on Releases to the Environment as to whether an application for release of, or to market, genetically modified organisms should be granted or rejected, and either—

(i) the conditions or limitations in accordance with which that Committee has advised that the consent should be granted, or

(ii) a summary of the reasons why that Committee has advised that the consent should not be granted;

(i) the summary of the information contained in the application required by regulation 12(1)(d) or as the case may be, of the application required by regulation 17(2)(j).

(3A) Subject to paragraph (4) and to the information not being confidential, in relation to an application for a consent under section 111(1) of the Act to market genetically modified organisms—

(a) the name and address of the person who is responsible for the marketing, whether manufacturer, importer or distributor;

(b) the proposed commercial name of the product;

(c) the names of the genetically modified organisms in the product, including the scientific and common names of,

where appropriate, the parental, recipient and donor organisms;

(d) the unique identifiers of the genetically modified organisms in the product;

(e) an application reference code assigned by the Welsh Ministers;

(f) the information included in the application as specified at paragraphs 3 and 7 of Schedule 3;

(g) information about stored samples of the genetically modified organisms, including the type of material, its genetic characterisation and stability, the amount of repository material, and the conditions of appropriate storage and shelf-life.

(4) Where the Welsh Ministers are or become aware that information regarding the genetically modified organisms or the purpose for which they will be released or marketed has been published which is more detailed than that which would satisfy the requirements of paragraph (3), they must enter so much of that more detailed information on the register as they consider appropriate.

(5) In relation to consents granted under section 111(1) of the Act—

(a) a copy of the consent, and a reference to the application in respect of which it was granted;

(b) any information supplied to the Welsh Ministers in accordance with conditions imposed on the consent;

(c) the fact that the consent has been varied or revoked, the contents of the notice by which the consent was varied or revoked, and a copy of the varied consent;

(d) a summary of any advice the Welsh Ministers have received from the Advisory Committee on Releases to the Environment as to whether a consent to release genetically modified organisms should be varied or revoked.

(6) The following information concerning the risk of damage being caused to the environment by genetically modified organisms—

(a) any information provided to the Welsh Ministers in accordance with section 111(6A) or 112(5)(b)(i) of the Act;

(b) any information relating to an unforeseen event occurring in connection with a release of a

genetically modified organism which might affect the risks there are of damage being caused to the environment notified to the Welsh Ministers in accordance with section 112(5)(b)(iii) of the Act.

(7) A copy of any consent to market genetically modified organisms granted before exit day by a competent authority of a Member State.

(7A) A copy of any assessment report produced in accordance with regulation 24(1)(c) or 26(1)(c).

(8) The location of any genetically modified organisms grown in Wales pursuant to a consent to market insofar as that information is supplied to the Welsh Ministers in accordance with the monitoring requirements imposed on the consent.

(9) Any decision adopted before exit day by the European Commission in accordance with Article 18 of the Deliberate Release Directive."

(17) For regulation 36 substitute—

"Keeping the register

36.—(1) The information prescribed in regulation 35(2) shall be placed on the register within twelve days of the prohibition notice being served.

(2) The information prescribed in paragraphs (a) to (g) and (i) of regulation 35(3) shall be placed on the register within twelve days of the receipt by the Welsh Ministers of the application for consent to release or market.

(3) The information prescribed in regulation 35(3)(h) shall be placed on the register within twelve days of the consent being granted or refused.

(4) The information prescribed in regulation 35(3A) shall be placed on the register within twelve days of the receipt by the Welsh Ministers of the application for consent to market.

(5) The information prescribed in regulation 35(5)(a) shall be placed on the register within twelve days of the consent being granted.

(6) The information prescribed in regulation 35(5)(b) and (d) shall be placed on the register within twelve days of its receipt by the Welsh Ministers.

(7) The information prescribed in regulation 35(5)(c) shall be placed on the register within

fourteen days of the consent being revoked or varied.

(8) The information prescribed in regulation 35(6) and (10) shall be placed on the register within fourteen days of its receipt by the Welsh Ministers.

(9) The information prescribed in regulation 35(7A) shall be placed on the register within twelve days of its production.

(10) The information prescribed in regulation 35(8) shall be placed on the register within fourteen days of its receipt by the Welsh Ministers."

(18) In Schedule 3—

(a) in paragraph 2, omit "in the European Union";

(b) in paragraph 5, omit "within the European Union";

(c) in paragraph 8, omit "established in the European Union";

(d) in paragraph 14, for "the European Union" substitute "Wales".

(19) In Schedule 4, in paragraph 6, omit the words from ", and whether the views" to the end.

Amendments to the Genetically Modified Organisms (Transboundary Movement) (Wales) Regulations 2005

3.—(1) The Genetically Modified Organisms (Transboundary Movement) (Wales) Regulations 2005(**1**) are amended as follows.

(2) In the Schedule—

(a) in Part 1, in the text in the second column in the row "Article 10(3)," for the words from "without authorisation" to the end substitute "which are not permitted to be marketed in the United Kingdom, or without authorisation to the import having been expressly agreed by the competent authority of the importing country.";

(b) in Part 2, in the text in the second column in the row "Article 6", omit "and to the Commission".

Revocations

4.—(1) Regulation 4(2) of the Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018(**2**) is revoked.

(**1**) S.I. 2005/1912 (W. 155).
(**2**) S.I. 2018/1216 (W. 249).

(2) Part 3 of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019(**1**) is revoked.

(3) Regulation 17 of the Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019(**2**) is revoked.

Name
Minister for Environment, Energy and Rural Affairs, one of the Welsh Ministers
Date

(**1**) S.I. 2019/379 (W. 94).
(**2**) S.I. 2019/463 (W. 111).

Explanatory Memorandum to the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
5 November 2019

PART 1

1. Description

1.1 This instrument makes technical changes to ensure the above legislation is operable after exit day.

1.2 Regulations 1 and 4 of this instrument come into force "immediately before exit day" and regulations 2 and 3 come into force on "exit day". Section 20(1) of the European Union (Withdrawal) Act 2018 currently defines as 11.00pm on 31 October 2019, but this is likely to change in the near future.

1.3 All changes essentially provide drafting fixes required to maintain continuity of approach after EU-exit.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16) (the "2018 Act") in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to the draft affirmative procedure.

2.3 The Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 ("the Principal Regulations") were laid on 5 February 2019 and will be revoked and remade, in part, by this amending statutory instrument.

2.4 The Constitutional and Legislative Affairs Committee (CLAC) reported on the Principal Regulations on 13 March 2019 and raised a number of technical points. Their report made a number of technical points:
http://www.assembly.wales/laid%20documents/cr-ld12445/cr-ld12445-e.pdf

2.6 The Welsh Government responded to CLAC's report on 25 March 2019 addressing each of the technical matters raised by CLAC. In that response, the Welsh Government accepted that many of the issues raised by CLAC necessitated amendments to the Principal Regulations. This statutory instrument makes those amendments.

3. Legislative background

3.1 This instrument is being made using the powers in paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the commitments made by the Welsh Ministers, the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 This instrument amends the obligations and procedures derived from Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs and repealing Council Directive 90/220/EEC ("the Deliberate Release Directive") which specifies a framework of controls on the release of GMOs. That Directive has already been transposed into domestic law but the transposing domestic instrument requires changes to be operable post-Brexit. Proposed releases of GMOs require prior authorisation and this is subject to the GMO in question passing a science-based assessment of its potential impact on human health and the environment. Decisions on whether to approve GMO trial releases are delegated to Member States and regions within Member States. Decisions on the release of GMOs for commercial marketing are taken collectively at EU level. In the specific case of GMO seeds for cultivation, the Deliberate Release Directive provides discretionary provisions which allow Member States, or devolved Governments within Member States, to block the cultivation of EU-approved seeds in their territory.

4.2 The Deliberate Release Directive is implemented in Wales by:

- The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 ("2002 Regulations")

This instrument also amends our domestic implementation of Regulation (EC) No. 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms, as implemented in Wales by the Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005, which regulates the export of GMOs from the EU to third (non-EU) countries. The key requirement is for the planned first export of a GMO intended for environmental release to be notified to the receiving country to obtain its approval before shipment. The 2002 Regulations implements requirements of the Cartagena Biosafety Protocol to the United Nations Convention on Biological Diversity (to which the EU and UK are each a Party).

Why is it being changed?

4.3 This instrument applies to policy areas which are a devolved matter. This instrument provides the continued ability to ensure environmental protection in Wales when the UK leaves the EU.

4.5 As set out in paragraph 2.6, this amending statutory instrument provides for amendments to the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, to reflect certain technical points raised by CLAC. The amendments are described below.

4.6 CLAC queried why the definition of "pre-exit approved product" did not include products approved under the Food and Feed Regulation before exit day. Regulation 2(2) addresses this deficiency.

4.7 CLAC identified that provisions within the Genetically Modified Organisms (Deliberate Release and Transboundary Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, appeared to remove the 10 year cap for the marketing of GMOs.

4.8 Regulation 2(10) (4) ensures that the 10 year cap for the marketing of GMOs is maintained post exit from the EU.

4.9 CLAC noted the amending provision for Regulation 24(1) (e) of the 2002 Regulations, which replaces this provision with a new provision. Regulation 24(1) (d) deals with the Welsh Ministers' duties to notify an applicant of their decision. The original 24(1) (e) dealt with action following that decision. However, the new 24(1) (e) requires the Welsh Ministers to take into account certain matters in taking their decision. The committee concluded that new Regulation 24(1) (e) should precede Regulation 24(1)(d), not follow it.

4.10 Regulation 2(9) has been amended so as to address this issue.

4.11 CLAC highlighted that the duty on Welsh Ministers to publish additional information in the public register concerning GMOs lacked any deadline.

4.12 Regulation 2(17) of the 2019 addresses this technical point.

4.13 CLAC noted that the reference to the Food and Feed Regulation in Regulation 2 of the 2002 Regulations is treated differently from the references to the "Deliberate Release Directive", and the "First Simplified Procedure".

4.14 This amending statutory instrument revokes the amendments to the definition made by 2019/379 as that definition is amended by a separate SI (the Genetically Modified Organisms (Deliberate Release) (Amendment) (Wales) Regulations 2019, which transpose Directive 2018/350) . Regulation 17 of the Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations is revoked by Regulations 4(3).

4.15 The effect of these Regulations is to avoid any amendment to the definition of the "First Simplified Procedure" under the 2002 Regulations.

4.16 Other, more minor amendments to cross references have been made in response to CLAC's report.

Points raised by CLAC that did not require an amendment for inclusion within this amending statutory instrument

4.17 Regulations 2(2)(b) and (c) – "approved product" and "pre-exit product. CLAC noted that the Food and Feed Regulation gave the function of authorising products for marketing to the European Commission, assisted by an EU Committee, and on the basis of a scientific opinion from the European Food Safety Authority ("EFSA").

4.18 CLAC questioned whether the Commission will be able to continue giving authorisations that are recognised in the UK, including in Wales under the Food and Feed Regulation. They pointed out that this would be consistent with the overall intention of the EUWA, to maintain continuity, as far as practicable and for the time being, between pre- and post-Brexit law derived from the EU. CLAC identified the political significance in continuing to recognise marketing certificates for food and feed products made of, or including, genetically-modified ingredients, issued by an EU body. However, CLAC questioned whether there was a need to ensure that, post-Brexit, consents for cultivation of GMOs granted by the Commission should be excluded from the scope of the 2002 Regulations.

4.19 The Welsh Government has subsequently confirmed that the food and feed regulation will be amended before it is incorporated into domestic law (see the Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019/705). As a result of those amendments, the EU Commission will have no role in approving the marketing or cultivation of genetically modified organisms after the UK leaves the European Union. Therefore, there is no need to exclude from the ambit of "approved product" any post-exit consents to cultivate since no such consents can exist.

4.20 Regulation 2(13) – register in relation to application to market GMO. Regulation 2(13) amends regulation 35 of the 2002 Regulations by inserting an obligation to include particulars detailed under a new paragraph (3A) within the register required by section 122 of the Environmental Protection Act 1990. CLAC suggested it would be beneficial to set out where equivalent obligations on the EU Commission arose under the law as it currently stands. The Welsh Government can confirm that those obligations arise under Articles 24 and 13(h) of the 2001/18EC Directive.

4.21 For completeness, one issue regarding the new regulation 35(7) should be addressed. That provision requires certain information to be placed on the register but, unlike in other cases dealt with by regulation 35, no time limit is specified for the fulfilment of that obligation. This is in contrast to the position under the current

regulations. The reason for this change is that the new 35(7) is very different in character from the current provision bearing that number.

4.22 The current 35(7) requires consents to market granted by other EU member states to be placed on the register. Regulation 36(8) requires this to be done within 14 days of the information being received. Whilst the UK is a member of the EU this is entirely appropriate.

4.23 The new 35(7) imposes an obligation to place on the register consents to market granted by EU member states prior to exit day. Due to the obligation of the current 35(7) almost all such consents should already have been placed on the register in any event. This requirement is aimed at all consents granted prior to exit day – as without an enduring obligation to maintain the requirement for these consents to be on the register, they could simply be removed. The two categories below are the two most likely scenarios of where a consent might not already be on the register. But the requirement also covers consents that, for some reason (including administrative error) were not placed on the register.

(1) Those consents only received by Welsh Ministers less than 14 days before exit day.
(2) Those consents which are granted prior to exit day but which are not been received by Welsh Ministers until after exit day.

The current provisions do not cover such consents.

4.24 For the above reasons, the new 35(7) is substantially different to the current provision. It is not a requirement that attaches to future consents but rather to an unknown number of existing consents, including those already placed on the register. In these circumstances the Welsh Government does not considered it necessary to impose a requirement that the material be put on the register within a certain time. Rather, the default position that the obligation must be fulfilled within a reasonable time will apply. The requirement arises immediately at exit day and then applies on an enduring basis. The requirement should be satisfied immediately as all pre-exit consents should already be on the register.

4.25 The Welsh Government notes that the equivalent England only SI contains provisions which produce an identical effect.

What will it now do?

4.26 The instrument will ensure that the legislation described above will operate effectively in the UK after we leave the EU. Existing processes for reaching decisions will be maintained. The release or marketing of genetically modified organisms will continue to need prior authorisation: approval to release, or market, a genetically modified organism will only be granted if a science-based assessment indicates that the safety of human health or the environment will not be compromised. The four administrations within the United Kingdom intend to pursue a common approach to procedures governing the release and

management of GMOs. Wales therefore intends to align its procedures for achieving these aims with those of England, Northern Ireland and Scotland.

5. Consultation

5.1 No formal consultations were carried out in respect of the instrument as its purpose is to resolve operability issues in order to preserve and protect the existing policy regime.

6. Regulatory Impact Assessment (RIA)

6.1 There is no, or no significant, impact on business, charities or voluntary bodies.

6.2 There is no, or no significant, impact on the public sector.

6.3 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. The instrument simply maintains existing laws in a way that works for Wales once the UK leaves the EU. No substantive policy changes will be brought in through this legislation.

Annex 1
Statements under the European Union (Withdrawal) Act 2018

Part 1
Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has

		committed to make the same statement when exercising powers in Schedule 2	had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	A statement to explain why it is appropriate to create such a sub-delegated power.
Urgency	Sub-paragraph (2)	Welsh Ministers	A statement that the Welsh

	and (8) of paragraph 7, Schedule 7	exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Statement under paragraph 7(2) of Schedule 7 to the European Union (Withdrawal) Act 2018

This is not required.

2. Appropriateness statement

2.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 “In my view the Genetically Modified Organisms (Deliberate Release and Transboundary Movements) (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019 does no more than is appropriate”. This is the case because all changes being made are solely in order to address deficiencies arising from EU Exit”.

3. Good reasons

3.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded its provisions represent a reasonable course of action”. This is because the provisions ensure that protections provided by The Genetically Modified Organisms (Deliberate Release) (Wales) Regulations 2002 and The Genetically Modified Organisms (Transboundary Movements) (Wales) Regulations 2005 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

4.3 Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

This is not required.

Jeremy Miles AC/AM
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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/CG/5049/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

7 November 2019

Dear Mick

WRITING LAWS FOR WALES: A GUIDE TO DRAFTING LEGISLATION

I am pleased to share with you and Committee Members a copy of the Welsh Government's latest guidance on drafting legislation. Although these are internal guidelines, we expect they will also be a helpful resource for others who are involved in producing or scrutinising Assembly Bills and Welsh subordinate legislation.

In the draft Standing Order currently being considered by the Business Committee, and the associated guidance to be issued by the Llywydd, reference is made to *"current drafting practice"*. The guidance explains that this means the legislative drafting practice for the time being used by the Office of the Legislative Counsel. *Drafftio Deddfau i Gymru / Writing Laws for Wales* is the expression of "current drafting practice" and will therefore act as the standard for drafting by which consolidation bills (and indeed other Bills prepared by the Government) may be understood.

Yours sincerely

Jeremy Miles AM
Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

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Llywodraeth Cymru
Welsh Government

Writing Laws for Wales:

A guide to legislative drafting

SWYDDFA'R CWNSLERIAID DEDDFWRIAETHOL
OFFICE OF THE LEGISLATIVE COUNSEL

Foreword – Counsel General for Wales

Legislation is the means by which government policy is translated into binding rules which govern us all. To fulfil its purpose, legislation must accurately reflect the policy intention and it must be communicated clearly so that it can be understood by those affected by it.

Legislation often conveys complicated concepts, set in a complex context, and will generally prescribe serious consequences in the event of non-compliance with its requirements. The way legislation is drafted, therefore, is important. Conveying changes in law as concisely and clearly as the subject matter allows, while avoiding loopholes or uncertainty, is a specialist skill – and despite our National Assembly being one of the world's newest legislatures the Welsh Government's drafting office is already developing a reputation for excellence.

Developing well drafted new laws is a crucial part of the Welsh Government's long term aim to develop an accessible, modern and bilingual Welsh statute book. We aim to bring order to the vast and sprawling statutes so as to enable the people of Wales to understand their rights and responsibilities. The accessibility of our legislation is fundamental to the rule of law, to our emerging legal jurisdiction and to our democracy.

In sharing this guidance I hope that the process of drafting legislation will be better understood by all, not least the National Assembly, the judiciary, and the wider legal community, for whom its impact is so important.

Jeremy Miles AM

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Introduction – First Legislative Counsel

Legislative drafting is an art not a science, and each new situation requires a bespoke solution. But there are guiding principles all drafters follow and there is virtue also in avoiding unnecessary inconsistencies. For this reason the Office of the Legislative Counsel has developed this guidance. What follows is not a guide on how to draft a Bill or on how to interpret statutes. It is a collection of the internal guidance which parliamentary counsel use when drafting Bills for the Welsh Government. Its main purpose is to allow drafters to inject a degree of cohesion and consistency into the overall Welsh statute book, with a view to helping users of legislation to understand it better.

The Office of the Legislative Counsel has been drafting Measures and Acts of the National Assembly for over 10 years and we always strive to draft clear, effective and accessible law in both English and Welsh. We have accumulated a wealth of legislative experience and expertise and we have begun capturing and sharing our knowledge both among the members of the drafting office and with others who are engaged or interested in the drafting of Welsh legislation.

More and more people are now accessing legislation, with statutes most commonly searched for and read online. With legal advice less available there is more onus than ever on drafters to make law easier to navigate and read. Clear and effective writing doesn't happen by accident and involves much more than simply using intelligible words and expressions. We try to develop legislation that is direct and straightforward and which "tells the story" logically and concisely. Much thought is given to the words used, the order in which the words are used, and the overall layout and structure of the document. In doing this we try to take account of the latest expertise on linguistics and the way in which people read and access legislation. Underpinning our work is an overarching aim to put the user of legislation first by making it as easy to understand as possible.

It is a great privilege to be responsible for helping shape the law of Wales. We hope that sharing this drafting manual will give some insight into how a Bill is prepared and will encourage comments on our approach to drafting legislation and suggestions for how we should continue to improve the quality of Wales's law. Legislative drafting is a creative activity and legislative counsel need to be free to evolve and adjust drafting practice to ensure that modern legislation continues to improve and adapt to the needs of those who use it. Our guidance is kept under constant review and we hope to engage and involve others to help us to develop new ways of making our laws more accessible.

Dylan Hughes

Contents

Chapter 1: Introduction

1.1 Using this guidance

(1) This document sets out the main principles and techniques that the Welsh Government applies to its legislative drafting. It is principally intended to be a guide for the following Welsh Government officials:

- members of the Office of the Legislative Counsel who write Assembly Bills;
- lawyers and other officials who write Welsh statutory instruments;
- legislative translators and legislative text editors.

(2) We hope that it will also be a helpful resource for others who are involved in producing or scrutinising Assembly Bills and Welsh subordinate legislation, and for anyone who is interested in understanding how Welsh legislation is written.

(3) This guidance is intended to promote consistency in legislative drafting. All Welsh Government officials involved in preparing legislation are therefore asked to have regard to it. However, the guidance should not be followed rigidly in every case; drafters must think carefully and creatively about how best to meet the drafting challenges that arise on each project, and decide which drafting technique gives effect to the policy in the clearest possible way.

1.2 Key principles underlying the guidance

(1) Legislation must be effective, but it should also be as clear as possible. The guidance describes various techniques that drafters can use to help produce clearer legislation. Clarity is about making it easy for readers to understand what is being said, and is affected both by the organisation of the material and by the words that are used.

(2) The Welsh Government is committed to improving the accessibility of Welsh law, and Part 1 of the Legislation (Wales) Act 2019 will require future Governments to prepare programmes setting out how they intend to improve accessibility. The 2019 Act makes clear that "accessibility" includes the extent to which the law is clearly and logically organised, easy to understand and certain in its effect. Ensuring that Welsh legislation is clearly written will therefore have an important role to play in promoting accessibility, and may form part of programmes under the Act.

(3) This guidance advises drafters to aim for simplicity of structure and language. However, there can be tension between the aims of simplicity and of precision (i.e. ensuring that the legal effect of legislation is unambiguous). Drafters will need to use their experience and judgment, and draw on the experience and judgment of their colleagues, in deciding how to strike the right balance.

(4) In considering these issues, drafters should be guided by the interests of the readers of the legislation, bearing in mind that there will be a number of different audiences and that one group of readers may well have different needs from another. Those groups may include individuals who will be affected by the legislation, public bodies that will administer it, lawyers who will advise on its meaning, courts which may be required to decide disputes under it, legislators and other interested parties.

(5) Legislation made by the National Assembly and the Welsh Government is, with very few exceptions, made bilingually in Welsh and English. The two language texts of bilingual Welsh legislation have equal status for all purposes[1]. This demands even greater care when

1 See section 5 of the Legislation (Wales) Act 2019 (which restates section 156(1) of the Government of Wales Act 2006).

producing the legislation. The two texts must produce the same effect while respecting the syntax and idiom of each language. And each text must express that effect clearly, without relying on the other text to resolve ambiguities.

1.3 Status of this document

(1) This guidance has been prepared by the Office of the Legislative Counsel. This edition is intended to set out the Welsh Government's approach to legislative drafting as it stands in the autumn of 2019.

(2) The guidance is not intended to be a comprehensive treatise on drafting legislation. There is a substantial body of literature on legal writing and legislative drafting, and the Annex contains a list of publications that readers may find useful.

(3) This edition takes account of the changes made by the Legislation (Wales) Act 2019, including the provisions in Part 2 of the Act about the interpretation and operation of Assembly Acts and Welsh subordinate instruments[2]. Those provisions will apply to Acts that receive Royal Assent on or after 1 January 2020, and instruments that are made from that date onwards.[3] The Welsh Government will issue guidance on the implications of the Act before then.

(4) This edition of the guidance refers in a number of places to European legislation which will be retained as part of domestic law when the United Kingdom leaves the European Union. The guidance reflects the position under the European Union (Withdrawal) Act 2018, but that position is likely to be modified if an agreement is reached on the terms of the United Kingdom's withdrawal.

(5) This document will be revised and republished from time to time. If you have any comments on the guidance, or suggestions for additions to it, please send them to:

Dylan Hughes, First Legislative Counsel – **LegislativeCounsel@Gov.Wales**

2 "Welsh subordinate instrument" is defined in section 3(2) of the 2019 Act, and includes nearly all subordinate legislation made by the Welsh Ministers and other devolved Welsh authorities. See paragraphs 37 to 46 of the Explanatory Notes to the 2019 Act for a detailed discussion.

3 If you are preparing legislation that will be enacted before 2020, the Interpretation Act 1978 will apply rather than Part 2 of the 2019 Act. Paragraph 7.29 of this guidance notes some of the main differences between the two Acts, and the Explanatory Notes to the 2019 Act describe them in more detail.

Chapter 2: Organisation and structure

2.1 Overview of Chapter

(1) The organisation of an Act or statutory instrument can play an important part in helping readers to find and understand the material that is relevant to them. This Chapter is about structuring legislative material in ways that are clear and helpful to readers. It includes guidance on the use of headings, overviews and Schedules, on dividing material between provisions such as sections and paragraphs, and on other ways of presenting material such as tables and formulas.

(2) See Chapter 6 for detailed guidance about the types of provision into which Acts and subordinate legislation may be divided and about how to refer to those provisions.
See Chapter 10 for guidance on the conventions governing the location of provisions about general and technical matters in Assembly Acts, such as the title of an Act and when it comes into force.

2.2 Telling the story

(1) An Act or statutory instrument should tell its story in a clear and logical way. Think carefully about what readers of the legislation will need to know, and the order in which they will want to know it. Remember that different readers may be interested in different aspects of the story, so different interests may need to be balanced in working out how to present it.

(2) The way that the legislation is structured is important in telling the story. The material should be ordered so that later propositions build on earlier ones. Techniques that can help in telling the story include:

(a) dealing with important and substantive issues before administrative and procedural ones;

(b) putting provisions of wide or general application before provisions about special cases or exceptions;

(c) grouping provisions together if they are about the same subject-matter or set out related concepts;

(d) arranging provisions in chronological order (for example, provisions establishing a licensing system might deal in turn with the application for a licence, the decision to issue the licence, conditions of the licence, renewal and revocation).

(3) You should adopt a consistent approach to arranging material throughout the legislation, using similar structures for provisions that express similar ideas or do similar things.

2.3 Divisions and Headings

(1) The Presiding Officer's Determination on Proper Form for Public Bills for Acts of the Assembly requires a Bill to contain numbered sections, supplemented where appropriate by Schedules. Similarly, the body of a statutory instrument will consist of regulations, rules or articles, which may be followed by one or more Schedules. The body of a Bill or instrument may be divided into Parts, as may a Schedule. A Part may in turn be divided into Chapters.

(2) The Presiding Officer's Determination requires that each Part, Chapter, section and Schedule of a Bill must have a brief descriptive heading. The corresponding divisions in statutory instruments should also have headings.

(3) You can help readers of your legislation by the way that you divide it into Parts, Chapters, sections, regulations etc. and by the headings that you use for them. The headings can show the relationships between provisions and act as a useful navigational tool for the reader. However, try not to over-use Parts and Chapters, as too many divisions and headings can be distracting.

(4) Provisions can also be grouped under italic headings that describe their subject-matter, either within Parts or Chapters, or in Bills or instruments that do not have Parts. If you feel that readers of your legislation would be helped by adding some headings, consider whether it would be sufficient to use this kind of italic heading.

(5) The headings of sections, regulations, rules and articles should give as full an indication of the contents as possible, but they should be kept reasonably short. They do not need to repeat the work of a Part or Chapter heading, and should not generally run into two lines.

(6) If there is no obvious way to summarise the contents of a given division of the legislation in a heading, that may suggest that it would be better to split it up or combine it with another division. The division of material should generally follow the division of thought.

(7) Headings have a relationship with each other, not just with the provisions they describe. The table of contents should provide an outline of the story. As the draft develops, revisit the table of contents regularly to make sure that it all still hangs together.

2.4 Overviews

(1) Another way to help readers to navigate a piece of legislation is to include an overview. This is a provision at the beginning of an Act or instrument (or at the beginning of a Part, Chapter or Schedule) summarising and explaining what is to follow.

(2) Overviews have been included in most Assembly Acts, but always consider whether they will be helpful to readers. There is no need for an overview if a clear picture is already given by the table of contents (or by the long title of an Act or the explanatory note to a statutory instrument).

(3) An overview of an entire piece of legislation is most likely to be useful in a large Act or instrument where the reader is unable to get a clear idea of what it does from the table of contents. An overview can provide a briefer summary, and can go further than the table of contents by drawing out the principal themes of the legislation and the relationships between provisions (see, for example, Part 1 of the Renting Homes (Wales) Act 2016).

(4) However, there is no reason in principle why an overview should not be included in an Act or instrument of any size if it would be helpful. For example, an overview may explain how the new legislation fits into the existing landscape by signposting other relevant legislation (as in section 1(11) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018).

(5) An overview is not normally intended to have any operative effect (in contrast to a purpose section which may be intended to affect the interpretation of other provisions). But this does not mean that a court would take no account of an overview in interpreting the legislation[4], so it is important to ensure that it is accurate. Extra care is required if an overview goes beyond merely outlining the contents and describes or explains how the legislation operates.

(6) Often an overview will have a section to itself, but sometimes it may be convenient to include provisions about the interpretation or application of the legislation in the same section. Be careful not to mislead readers: if operative material is included, “introduction” may be a better heading than “overview”.

(7) When amending a piece of legislation that has an overview, consider whether the overview also needs to be amended.

4 In the reference relating to the Local Government Byelaws (Wales) Bill [2013] 1 AC 793, [2012] UKSC 53, Lord Neuberger referred to the overview section when considering whether the Bill was within the Assembly’s legislative competence, and described that section as explaining the purpose of the Bill.

2.5 Schedules

(1) Schedules can be helpful for setting out material that would otherwise be in danger of obscuring the main story. But they will not always help the reader, because moving material to a Schedule at the back of legislation may make the story disjointed.

(2) A Schedule may be a useful place for:

- technical provision that is unlikely to be of interest to many readers;
- lengthy material that is at something of a tangent to the main story;
- repeals or revocations;
- long series of minor textual amendments;
- large tables and very long lists;
- the text of treaties.

(3) A Schedule may be a continuation of a provision in the body of the legislation. For example, section 143(1) of the Social Services and Well-being (Wales) Act 2014 defines a local authority's social services functions as its functions under the enactments listed in Schedule 2, and Schedule 2 lists the enactments. This kind of Schedule needs no further introduction.

(4) A Schedule may instead contain free-standing provisions. This kind of Schedule will need to be introduced by a provision in the body of the legislation to tell the reader that it is there and indicate its content. Where the legislation is divided into Parts and Chapters, the location of the provision introducing the Schedule also determines which Part or Chapter it belongs to.

(5) The provision introducing the Schedule should appear in the section (or the rule, regulation or article) to which the Schedule is most closely related; and if there is no other section to which the Schedule is closely related, it should be introduced by a separate section.

(6) The introductory wording should give an accurate description of what the Schedule does and should cover everything in it, to help the reader navigate the document. For example:

> Schedule 1 makes provision about civil sanctions.
> Schedule 2 contains minor and consequential amendments and repeals.

(7) Do not say that a Schedule "has effect": it has effect whether or not there is a provision in the body of the Act or instrument saying that it does.

(8) See paragraph 7.6 for further guidance on Schedules of amendments and repeals.

2.6 Sections, regulations, rules and articles

(1) Each section, regulation, rule or article should be a coherent set of provisions on the same topic, and should state its main proposition as soon as possible. If possible, it should start with the main proposition or with a provision which identifies the topic.

(2) Normally each sentence is a separate numbered provision. So in a section containing more than one sentence, each sentence is normally a separate subsection; and a regulation, article or rule containing more than one sentence is normally divided into paragraphs.

(3) However, there is no strict rule against having more than one sentence in a numbered provision. A second sentence may be appropriate where there is a particularly close connection between two propositions, or where the second point is just an afterthought to the first (so that putting it in a separate provision would place undue emphasis on it).

(4) Alternatively, it can sometimes be more accessible to set out a series of propositions under sub-headings within a single subsection. (See paragraph 2.13 on method statements and similar lists.)

(5) A section should not contain too many subsections; and a regulation, rule or article should not contain too many paragraphs. As a rule of thumb, it is probably better not to go beyond about 10 subdivisions or a full page of text. But this is a matter of judgment: one long section telling a self-contained story may be easier for the reader than two or more shorter sections.

2.7 Paragraphing

(1) A sentence can be made more digestible by separating the text out into paragraphs or sub-paragraphs numbered (a), (b), (c) etc. This can be especially helpful if the sentence contains a number of conditions or exceptions, each of which is itself fairly complicated. For example:

> WRA may approve the carrying out of restoration work at an authorised landfill site only if—
>
> (a) the operator of the site applies in writing to WRA for the approval,
>
> (b) the application is made before the restoration work begins, and
>
> (c) WRA is satisfied that the work is required by a condition of an environmental permit or planning permission relating to the site.

(2) But be careful not to overdo paragraphing. Splitting things up requires the reader to put them back together, and very short paragraphs can be distracting. In some circumstances, it may be better to have continuous text.

(3) Use sub-paragraphs or paragraphs numbered (i), (ii), (iii) etc. sparingly, and do not go down below that level.

(4) All of the paragraphs in a list should have the same relationship to the words that introduce them, and should be in the same grammatical form. When drafting in English, try to avoid a mixture of paragraphs containing positive and negative statements, or of paragraphs conferring powers and imposing duties (such as "the Welsh Ministers— (a) may do X; (b) must not do Y"). This kind of mixture can be hard to read, and can in particular lead to awkward wording in the Welsh language text, because sentences in Welsh start with the verb rather than the subject.

(5) Paragraphs are numbered using the English alphabet in both the English and Welsh language texts, so paragraph (c) is followed by paragraphs (d), (e) and (f) rather than paragraphs (ch), (d) and (dd).[5]

(6) Paragraphs need not have letters or numbers. Lists of definitions usually consist of unnumbered paragraphs, and this approach may sometimes be appropriate for other lists, for example if both the list and the individual entries are relatively short.

(7) Paragraphs that are linked by a conjunction should end with commas. Paragraphs that are not linked by a conjunction should end with semi-colons.

2.8 "Sandwich" provisions and double sets of paragraphs

(1) A "sandwich" provision is one in which some introductory text is followed by a set of paragraphs, and then by some more text after the paragraphs. For example:

> WRA may authorise—
>
> (a) a member of WRA,
>
> (b) a committee of WRA or a sub-committee of such a committee, or
>
> (c) the chief executive or any other member of staff of WRA,
>
> to carry out any of its functions (to any extent).

5 There are occasional exceptions. The various sets of Welsh Language Standards Regulations made under the Welsh Language (Wales) Measure 2011 have been numbered according to the Welsh alphabet in both the Welsh language and English language texts.

(2) This structure can be unhelpful for the reader, especially if the main proposition is relegated to the end of the sentence. The proposition that appears after the paragraphs can often be moved into the opening words, and usually the result is easier to understand. For example the text above could be reorganised to say:

> WRA may authorise the following to carry out any of its functions (to any extent)—
> (a) a member of WRA,
> (b) a committee of WRA or a sub-committee of such a committee, or
> (c) the chief executive or any other member of staff of WRA.

(3) Sandwiches may nevertheless be helpful in some cases, especially in the case of relatively short propositions where no more than two or three paragraphs separate the opening words from the final words.

(4) But never use a structure which includes a sandwich followed by a second set of paragraphs in the same sentence. For example, do not draft in the following way:

> Where the registrar decides to—
> (a) refuse an application for registration, or
> (b) refuse an application for renewal of a person's registration,
> the registrar must give the person to whom the decision relates notice—
> (i) of the decision,
> (ii) of the reasons for the decision, and
> (iii) of the right of appeal under section 101.

(5) Instead, split the proposition into two sentences:

> (3) Subsection (4) applies where the registrar decides to—
> (a) refuse an application for registration, or
> (b) refuse an application for renewal of a person's registration.
> (4) The registrar must give the person to whom the decision relates notice—
> (a) of the decision,
> (b) of the reasons for the decision, and
> (c) of the right of appeal under section 101.

2.9 Conjunctions and other ways of showing relationships between paragraphs

(1) When using paragraphs, make sure that it is clear whether they are intended to operate cumulatively or as alternatives. In the case of simple lists, the intention may be clear enough from the context that nothing needs to be said. For example, in a subsection containing paragraphs which list the types of provision that may be made in regulations, it may be clear enough that the regulations may make any or all of those types of provision.

(2) Where something more is needed, the techniques for making the intention clear include using appropriate conjunctions between the paragraphs and putting appropriate wording before the paragraphs.

(3) In English the conjunction "or" can have an inclusive sense (where "A or B" means A or B or both) and an exclusive one (where "A or B" means A or B but not both). The inclusive sense is probably more common in legislation, but this will depend on the context. Sometimes it will be clear that "or" must have an exclusive meaning because the options described in the paragraphs are incompatible, but in other cases it may be less clear.

(4) In Welsh the position is slightly different, because "or" can be expressed by two different words. *"Neu"* is commonly used in both the inclusive and exclusive senses, and therefore gives rise to similar issues to "or" in English. However, *"ynteu"* is used only to convey the exclusive sense, often in apposition to *"ai"* or *"a"* (corresponding to "either" or "whether").

(5) One way to make clear that both of two alternatives are permissible is to say so expressly. In some cases it is particularly important to do this: for example, a penal provision which allows for the imposition of a fine or a sentence of imprisonment should state that both penalties can be imposed where that is the intention. This may be done by including the words "or both" after the alternatives.

(6) Similar issues can arise with "and". For example, if a provision gives a person the power to do "A and B" it may not always be clear whether the person must do both, although the context will probably provide the answer.

(7) It is often sufficient to put a conjunction at the end of the penultimate paragraph, and to rely on the implication that each of the preceding paragraphs is separated by the same conjunction. But this makes the reader wait until then to find out whether the paragraphs are cumulative or alternative, which may be unhelpful with long lists. It is possible to put a conjunction at the end of each paragraph instead, but that can read awkwardly.

(8) Do not use a mixture of different conjunctions in the same list of paragraphs, as this can create ambiguity. For the same reason, avoid "and/or".

(9) Where relying on conjunctions would not be clear enough, consider including suitable wording in the text that comes before the paragraphs, to indicate whether the paragraphs are cumulative or alternative. Depending on the intended effect, it may be appropriate for the words introducing the paragraphs to refer to "one," "all" or "one or more" of the options that follow. (Or if there are only two options, they should refer to "either", "both" or "either or both" of them.) For example:

> A disposal of material is exempt from tax if all of the following conditions are met…
>
> The regulations may provide for a complaint to be considered by one or more of the following…
>
> The Welsh Ministers may direct the governing body to do either or both of the following…

(10) If the words introducing a list of paragraphs make clear whether they are to be read inclusively or exclusively, it is not necessary to include a conjunction as well (and it may sometimes be unhelpful to do so).

2.10 Alternatives to subsections and paragraphs: introduction

There are various ways of presenting information other than using continuous text divided into subsections and paragraphs. The paragraphs which follow describe the main alternatives. All of these techniques can be useful in the right context, but they should only be used if they produce a clearer or simpler result than standard text.

2.11 Tables

(1) A table is often a neat and clear way of setting out a number of cases with the rule that applies to each of them. It can be a way of avoiding repetition where you would otherwise have a number of very similar provisions. For example, if a term needs to mean different things for different situations, it may be simpler to list the situations and meanings in a table, and have just one provision explaining how they relate to one another.

(2) For examples of tables, see Schedule 1 to the Local Government Byelaws (Wales) Act 2012 and sections 4 to 7 of the Human Transplantation (Wales) Act 2013.

2.12 Formulas[6]

(1) A formula may be the neatest way to express a relationship between various quantities. Setting the same thing out in words may take too long and be less clear. That said, if the proposition is a relatively simple one (such as adding two numbers), using a formula may make it more look more complicated than it is.

(2) Sometimes a sequence of written instructions, or "method statement," may be more helpful than a formula (see below). In working out which is most appropriate, be guided by the expected readership: an accountant may find formulas useful, while a reader who needs only a description of what is happening might not.

(3) When using a formula, it is usually better to deal with all of the necessary calculations in the formula itself, so that each element represents a single thing rather than the result of another calculation. But that is not always possible.

(4) Try to use a single letter for each element in the formula, rather than a string of letters: some readers might expect an abbreviation like "ST" to mean the product of S and T. (But if you do intend to refer to the product of S and T, say "S x T".)

(5) There are numerous examples of formulas in the Schedules to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

2.13 Method statements and other lists

(1) When listing a number of steps, cases, conditions or exceptions, you could state each of them separately in a numbered subsection or paragraph, but an alternative is to set them out under italic sub-headings within a single subsection.

(2) An example of this approach is the "method statement," which may be the neatest way to set out steps in a calculation or other process. The Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 contains various method statements. For example, paragraph 29 of Schedule 6 sets out the method for calculating tax on rent as follows:

> *Step 1*
> Calculate the net present value (the "NPV") of the rent payable over the term of the lease (see paragraph 31).
>
> *Step 2*
> For each tax band applicable to the acquisition, multiply so much of the NPV as falls within the band by the tax rate for that band.
>
> *Step 3*
> Calculate the sum of the amounts reached under Step 2.
>
> The result is the amount of tax chargeable in respect of rent.

(3) This approach is particularly helpful where each condition or exception is a complex proposition of its own. For example, section 15 of the Landfill Disposals Tax (Wales) Act 2017 contains a list of requirements which must be met for material deposited in a landfill site to be "qualifying material," which are set out under italic headings in a single subsection.

(4) However, this method can be overdone and labelling a provision a "case" or "condition" could draw too much attention to the provision.

(5) If you use this approach, the steps, cases or conditions should be numbered 1, 2, etc. (not A, B, etc.).

6 For a detailed discussion, see Armstrong, "Mathematics in Legislation," *The Loophole*, January 2018.

2.14 Diagrams, images or maps

(1) A diagram or other image can sometimes be the clearest way of presenting information to the reader. For example, Schedule 1 to the Specified Crustaceans (Prohibition on Fishing, Landing, Sale and Carriage) (Wales) Order 2015 (SI 2015/2076) includes diagrams of crustaceans to demonstrate how their size should be measured.

(2) Where statutory instruments need to identify areas of land or of the sea, they may do so by reference to co-ordinates, but have sometimes used maps to indicate an area that may be acquired or in relation to which rights may be exercised.

(3) If presenting information in any of these ways, it is important to ensure not only that the diagram, map or image is produced accurately, but also that its legal effect is set out clearly in the legislation.

(4) Where co-ordinates or other conventional drafting techniques are used in the legislation itself, it may still be helpful to provide an illustrative map, diagram or image in the accompanying explanatory material (with an explanation of its status).

Chapter 3: Language and style

Introduction

3.1 Overview of Chapter

This Chapter contains general guidance about language and style. It describes:

(a) ways in which sentence structure and vocabulary can contribute to the clarity of legislation;

(b) techniques for drafting legislation in gender-neutral terms;

(c) various points of style for references to persons and bodies, to Wales and England, and to numbers, dates and units of measurement.

3.2 Plain language

(1) Legislation should be written in plain language, so far as possible.

(2) Writing in plain language means that legislation should use sentences which are simply and logically constructed, and which convey their meaning directly and precisely.

(3) The following principles can help to produce sentences that meet these objectives, and are described in more detail later in this Chapter:

(a) do not try to say too much in a single sentence;

(b) make sure that word order is natural and does not create ambiguity;

(c) use no more (and no fewer) words than necessary;

(d) avoid turning verbs into nouns;

(e) prefer the active voice to the passive;

(f) prefer positive statements to negative ones;

(g) write in the present tense and indicative mood wherever possible.

(4) Using plain language also means that legislation should be written in modern, standard Welsh and English.

(5) The following principles should normally be followed in choosing the words that are used in legislation, and are described in more detail later in this Chapter:

(a) use simple and familiar words, not complex or unusual words;

(b) use words that are currently in use, rather than using archaic words or coining new phrases;

(c) try to use words that are generally understood throughout Wales, not government jargon, unexplained acronyms or variants from regional dialects;

(d) use Welsh and English words, not foreign words or Latin;

(e) use precise and concrete words, not vague or abstract words.

3.3 Plain language in two languages

(1) Plain language should be used in both the Welsh and English language texts of legislation. Although one text will usually have been produced by translating the other, it is important that neither text should unnaturally follow the syntax of the other. The Welsh and English language texts have equal legal status for all purposes. Drafters, translators and equivalence checkers therefore need to ensure that both texts achieve the same legal effect using natural and modern language.

(2) Nevertheless, bear in mind that some ways of writing in one language may be difficult to express in the other language within the confines of legislative form and structure. Try to avoid writing in ways that are likely to cause translation difficulties, and consider redrafting your text if it proves hard to translate. This Chapter includes guidance on some ways of drafting that can ease the translation process.

Sentences

3.4 Length of sentences

(1) Do not write in long blocks of unbroken text. Sentences become difficult to understand if they contain too many ideas or include too many elements in addition to the subject and main verb. It is generally clearer to use short sentences which each express a single idea. Short sentences are generally easier to translate.

(2) Do not over-use subordinate clauses. Consider whether your sentences contain too much information that is not essential to the main proposition, and whether they could be broken up by moving non-essential elements into separate shorter sentences.

(3) Short sentences will not always be appropriate. It may be better to set out a number of powers or qualifications as a list in one sentence rather than as a series of sentences. But information should still be presented in short bites, for example by including each power or qualification in a separate paragraph or sub-paragraph.

3.5 Normal sentence structure

Follow normal word order in both English and Welsh so far as possible. Minimise unusual sentence structures, which can be harder to understand. In particular, try to avoid inserting words or subordinate clauses in places where they break up the main proposition that you are trying to convey. For example, say:

> A person may resign from office by giving notice to the Welsh Ministers.

NOT:

> A person may, by giving notice to the Welsh Ministers, resign from office.

3.6 Structure of conditional sentences

(1) The position of conditions in a sentence can affect the clarity of the sentence.

(2) If there is a single condition precedent for the application of a provision, it is usually better to state it first. For example:

> If a person pays the sum specified in a penalty notice, the person cannot be convicted of the offence to which the notice relates.

(3) If there is a single condition subsequent that will stop a provision applying, it is usually better placed after the main clause. For example:

> Proceedings before the tribunal must be held in private, except where the tribunal directs otherwise.

(4) If there are several conditions or exceptions, it is usually better to state the main proposition first and list the conditions or exceptions afterwards, either in paragraphs or sub-paragraphs of the same provision or in separate provisions. A sentence which starts with multiple conditions can be difficult to understand.

(5) When introducing conditions or exceptions, “where” is useful for stating a case or set of circumstances in which a later proposition applies (or does not apply). “If” is generally used for stating a contingency, i.e. a set of conditions that may or may not be satisfied. But there is no clear-cut distinction, and often either expression could be used. In those cases, “if” will rarely be incorrect and will often be more easily understood by the reader as introducing a condition.

(6) Do not use "provided that" or "on condition that" to introduce conditions that govern the application of a statutory provision.

3.7 Ambiguity caused by word order

(1) Take care that the order of words in a sentence does not create ambiguity. Some sentence structures that are grammatically possible can leave the relationships between words unclear and should therefore be avoided.

(2) If a sentence mentions multiple nouns, the positioning of adjectives or other modifiers can sometimes create doubt about which of the nouns they are intended to affect. This problem will often arise in English where a modifier is placed before a list of nouns, and in Welsh where it is placed after the nouns. For example, if the English language text refers to a "partial payment or waiver" does the adjective "partial" apply to waivers, or only to payments? And if the Welsh language text refers to *"taliad neu hepgoriad rhannol"* does the adjective *"rhannol"* apply only to *"hepgoriad"*?

(3) The ambiguity can usually be avoided by either re-ordering the sentence or repeating the modifier, depending on the intention. For example, in English there should be no ambiguity in referring to "a waiver or partial payment" (if "partial" was not meant to apply to waivers) or "a partial payment or partial waiver" (if it was meant to apply to both). (Similarly, in Welsh there would be no ambiguity in referring to *"taliad rhannol neu hepgoriad"* or *"taliad rhannol neu hepgoriad rhannol"* respectively.)

(4) Subordinate clauses placed after nouns can be ambiguous in the same way. Take care with relative clauses (introduced in English by pronouns such as "which" or "that" and in Welsh by relative verbs such as *"sydd"*) and with the equivalent participle clauses (introduced by present or past participles). For example, in a reference to "a provision of an Act which relates to housing" or "a provision of an Act relating to housing" does the provision or the whole Act relate to housing?

(5) It is often possible to avoid this type of ambiguity by re-ordering the sentence. If that is not possible, a definition can sometimes be used to remove problematic words from the main sentence (for example, by referring to "a provision of a housing Act" and defining a "housing Act" as one that relates to housing).

3.8 Take care placing "only"

(1) Take particular care not to misplace the English word "only" (or the corresponding Welsh phrases *"ni(d) ... ond"*, *"dim ond"* and *"yn unig"*). In English "only" normally modifies whatever comes immediately after it, and should be placed as close as possible to what it modifies. (In Welsh, the phrases that include "ond" normally modify whatever comes immediately after *"ond"*, while *"yn unig"* normally comes after the word or phrase that it modifies.) However, ambiguity may arise because all of these expressions can modify whole phrases as well as single words.

(2) For example, a provision might say:

> The Welsh Ministers may only pay a grant for postgraduate studies if the student is ordinarily resident in Wales.

(3) The intention would probably be to limit the circumstances in which grants could be paid for postgraduate studies, and that might be clear from the context. But if that were the intention, it could be made clearer by putting "only" immediately before the words it was meant to modify, as follows:

> The Welsh Ministers may pay a grant … only if the student is ordinarily resident in Wales.

(4) Alternatively, the provision might be intended to limit the ways in which the Welsh Ministers could support postgraduate studies (only by paying grants) or the level of studies for which Ministers could pay grants (only postgraduate level) when students were ordinarily resident in Wales. In either of those cases, the sentence would probably need to be restructured completely, e.g. in the latter case to say:

> … the only studies for which the Welsh Ministers may pay a grant are postgraduate studies.

(5) Always consider whether a word like "only" is actually necessary. Its purpose is to limit the application of a provision, so it should not be included unless there is a reason to think there might be other cases where the provision would apply.

3.9 Use no more (and no fewer) words than necessary

(1) Using more words than are needed will often make legislation harder to read and can introduce confusion and ambiguity, so try to remove any unnecessary words.

(2) Do not use long phrases that are traditionally found in legal writing if one or two words will do just as well. In particular, it is often possible to replace long adverbial phrases and compound prepositions with shorter and simpler versions, in one or both languages. For example, consider whether any of these traditional phrases could be replaced with one of the suggested alternatives:

Traditional phrase in English	**Alternatives**	**Traditional phrase in Welsh**	**Alternatives**
as to whether	whether	*ynghylch a*	*a*
for the purpose of	to	*at ddiben*	*i*
for the purposes of (an Act or provision)	in (see paragraph 4.8)	*at ddibenion (Deddf neu ddarpariaeth)*	*yn (gweler paragraff 4.8)*
in accordance with, pursuant to	by, under	*yn unol â*	*gan, o dan*
in the event that	if	*os digwydd bod*	*os*
located in, situated in	in	*wedi ei leoli yn/mewn*	*yn/mewn*
otherwise than	except, not		
otherwise than in	outside		
the manner in which	how	*y modd y mae (etc.)*	*sut*
the time at which	when	*yr amser y mae (etc.)*	*pryd, pan*
until such time as	until		

(3) The following traditional legal phrases can often be omitted altogether:

- "unless the context otherwise requires" – see paragraph 4.8(5);
- "of this Act" and similar phrases – see paragraph 5.4;
- "the provisions of" – see paragraph 5.5(3);
- "subject to" – see paragraph 5.6;
- "the period of" – see paragraph 8.8.

(4) Other phrases that are sometimes superfluous include "as the case may be" and "from time to time". Always consider whether these words and phrases actually add anything to the meaning of your text.

(5) However, do not be too economical with words. If a few more words would be clearer, use more words. You can cause problems for readers by overusing defined terms or trying to cover too many cases in a single sentence or formulation.

(6) One situation in which omitting words in English can introduce ambiguity is where a past participle is used without an auxiliary verb. In a reference to equipment "used" for a particular purpose, the participle "used" could have various meanings, including "is used", "was used" or "will be used". The missing auxiliary verb must be included in Welsh, so the time element cannot be left unstated.

3.10 Verbs not nouns

Avoid turning verbs into nouns (or "nominalisation"), as this results in longer sentences. Verb forms are often more direct and easier to understand. For example, the following verb forms can generally be used in place of the longer noun forms:

Verb form	**Longer noun form**
apply for	make an application for
arrange/*trefnu*	make arrangements for/*gwneud trefniadau ar gyfer*
consult/*ymgynghori â*	carry out consultation with/*cynnal ymgynghoriad â*
consider/*ystyried*	give consideration to/*rhoi ystyriaeth i* be of the opinion/*bod o'r farn*
permit/*caniatáu*	give permission for/*rhoi caniatâd i*
review/*adolygu*	carry out a review of/*cynnal adolygiad o*

3.11 Active not passive

(1) The active voice is usually clearer and simpler than the passive voice. For example:

> The Welsh Ministers must give a notice.

is more quickly understood than:

> A notice must be given by the Welsh Ministers.

(2) But the passive voice may be appropriate if the agent is unimportant, universal or unknown. For example, if it does not make any difference who gives a notice, it might be appropriate to say:

> If a notice is given to the Welsh Ministers…

(3) The passive may also be useful as a technique for gender-neutral drafting where it can be used without reducing clarity: see paragraph 3.22.

3.12 Positive not negative

(1) A positive sentence is often easier to understand than the negative version of the same thing. For example:

> Speak after the tone

is easier to understand than

> Do not speak until you hear the tone

(2) But this is not a universal rule. Whether the positive voice is better depends on the nature of the proposition and on where the drafter wishes to place the emphasis. Prohibitions may be best expressed in the negative. For example:

> Do not walk on the grass

is easier to understand than

> Walk only on the pathways

(3) Certain positive constructions in English may be expressed by negative constructions in Welsh. For example:

> The regulations may designate a person only if … (positive)

would be expressed in Welsh as:

> Ni chaiff y rheoliadau ddynodi person onid yw… (negative)

(4) Double negatives are often difficult to understand. If you can express the same meaning in another way, it is generally better do so.

(5) Quantities should normally be expressed positively rather than negatively. Say:

> at least 25%
> 25% or more

rather than:

> not less than 25%

3.13 Tenses and moods of verbs

(1) Verbs in legislation should be in the present tense and the indicative mood, unless one of the exceptions set out below applies. In particular, the present indicative should be used when describing the circumstances in which provisions apply, setting out legal consequences, and stating how legislation operates. For example:

> This section applies if the landlord makes a claim…
> A person who contravenes subsection (1) commits an offence.

(However, in Welsh the subjunctive form *"pan fo"* may also be used to describe the circumstances in which a provision applies, when "where" would be used in English.)

(2) The past and future tenses may be used where a provision needs to distinguish between things that are currently happening and things that have already happened or that will happen in the future. For example:

> WRA may cancel a person's registration if satisfied that the person has ceased to carry out taxable operations.

(3) The modal verbs "may" and "must" should be used to confer powers and impose duties. For example:

> WRA [may][must] review the decision.

(4) The formulations "must not" and *"ni chaiff"* should generally be preferred when imposing prohibitions. They are less likely to be misunderstood than the alternatives "may not" (which could sometimes be read as expressing a possibility rather than a prohibition) and *"rhaid … peidio"* (which can mean either that a person must not do something at all, or that they must stop doing something they are already doing).

(5) The imperative should be used in signposts to other provisions (e.g. "see section 5") and in textual amendments (see Chapter 7 for detailed examples). It can also be appropriate when setting out the steps in a calculation or other process (see paragraph 2.13 for an example).

(6) The conditional may be used when referring to a hypothetical or unreal situation. For example, tax legislation might refer to the amount of tax that "would otherwise have been chargeable" if an exemption or relief did not apply. In Welsh, the subjunctive forms "pe bai" etc. may also be used.

(7) The subjunctive mood should be used in both languages when making non-textual modifications to legislation, for example by requiring the legislation to be read "as if the reference to X were a reference to Y". This helps to show that the text is not being amended (see paragraph 7.37).

3.14 Problematic verbs: "shall", "is to" and "will"

(1) Welsh legislation should not use "shall" in the English language text. "Shall" is ambiguous because it can be used to refer to the future, to impose obligations, or in a declaratory sense. Provisions imposing obligations should use "must". Declaratory provisions should use the present indicative (see paragraph 3.13(1)).

(2) There is no single verb form in Welsh covering all of the senses in which "shall" is used in English. This makes it necessary to identify the specific meaning that is intended so that the right verb form can be used in the Welsh language text.

(3) When amending existing legislation, it may be appropriate to use "shall" in text that will be inserted near to existing provisions that already use "shall" in the same way.

(4) Alternatives such as "is to" and "are to" are sometimes used, but they can have the same range of meanings as "shall". These formulations can be useful, but they can often be replaced with the present indicative or "must". For example, a provision that "X is to be treated as Y" could just as well say that "X must be treated as Y".

(5) Subordinate legislation has sometimes used "will" to impose obligations on public authorities or state legal consequences. That approach should not be followed: use "must" for obligations and the present indicative for declaratory provisions.

Words

3.15 Use familiar words

(1) Use the simplest and most familiar words that will convey the meaning you intend. Try to avoid complex or unusual words, as difficult or obscure vocabulary is less likely to be understood. If there is more than one word that could express your meaning, consider which one seems most familiar and easiest to understand.

(2) Here are some examples of English words that have traditionally been used in legislation, and simpler or more familiar alternatives that can very often be used instead. Note that the alternative is not always shorter than the more traditional word, and that the same issues do not generally arise with the corresponding terms in Welsh.

Traditional word	Alternative	Traditional word	Alternative
afford (facilities, opportunities, etc.)	give, provide	notwithstanding	despite (see para 5.6(12))
commence	begin, start	particulars	information, details
comprise	consist of, have	prior	earlier
confer	give	prior to	before
construe	interpret (see para 4.11(7))	procure	get, obtain
determine	decide, set	purchase, purchaser	buy, buyer
dispatch	send	save (as preposition)	except, but
expiration, expiry	end	subsequent(ly)	later
forthwith	immediately, without delay	subsequent to	after
furnish	give, provide	sufficient(ly)	enough
initiate	begin, start	terminate	end, finish
like (as adjective)	similar, same	undertake (activities)	do, carry out
location	place	utilise	use
manner	way	vendor	seller

3.16 Avoid archaisms and neologisms

(1) The language used in legislation should reflect current usage wherever possible.

(2) Avoid archaic words that have fallen out of use in standard written Welsh or English. As well as appearing overly formal and legalistic, these words are often unnecessary. The following examples are mainly of archaisms that should be avoided when writing in English; most of them do not have direct equivalents in Welsh.

(3) Do not use “same” or “the same” as a demonstrative pronoun, and do not use “said” or “the said” as a demonstrative adjective. They are legalisms which can very often be omitted without any loss of meaning. If you do need to refer back to something you have just mentioned, use another pronoun such as “it” or “them”, or another phrase such as “the X”, “that X” or “the X in question”.

(4) Do not use adverbs beginning “here-”, “there-” and “where-” (e.g. “hereby”, “hereinafter”, “therein”, “therefrom”, “whereof”) or words like “above-mentioned” or “foregoing”. They may sometimes serve a purpose if a provision needs to refer to itself or refer back to something else, but in those cases use more specific words to make clear what is being referred to.

(5) Legislation should generally avoid coining new terms in both Welsh and English. However, it may occasionally be necessary in Welsh to appropriate an existing word and lend it a new meaning in legislation. For example, the word *“mangre”* (“place, spot or site”) was not commonly used in Welsh but was adopted as an equivalent to the English “premises”.

3.17 Try to use words that are generally understood throughout Wales

(1) Try to avoid policy jargon or legal jargon which is unlikely to be understood by the general reader. However, it is not always possible (or sensible) to express complex concepts in language that is easy for everybody to understand. Technical terms which could be regarded as jargon may be appropriate if they are well understood by the main audience of the legislation. But their use always needs to be fully justified.

(2) Do not use acronyms in legislation without defining them. See paragraph 4.4(5) for guidance on creating new acronyms.

(3) Avoid using colloquialisms and dialect words in Welsh and English, as they may not be familiar to all of the readers of the legislation. However, there is not always a single acceptable Welsh word in use throughout Wales, so occasionally two regional alternatives may be used in the same legislation (in which case they are given in alphabetical order separated by a forward slash). For example, several Assembly Acts have used *"tad-cu/taid, mam-gu/nain"* in definitions of family relationships.

3.18 Avoid foreign words and Latin

(1) Always use Welsh and English words where that is possible. Use words from Latin or other languages only if there is no acceptable alternative.

(2) Many Latin terms that were once used in the courts have now been replaced, and other Latin legal terms usually have Welsh and English equivalents which ordinary readers are more likely to understand. For example, legislation should not say that a person is a member of a body "ex officio" (i.e. due to holding another office). If anything needs to be said, words such as "by reason of that office" will probably be more readily understood.

(3) However, Latin terms can be acceptable in the following cases:

(a) where there is no equivalent term that does not contain Latin (e.g. "guardian ad litem", "ad valorem stamp duty";

(b) where it is necessary to identify a particular species of living organism using the traditional binomial naming system (e.g. "narcissus pseudonarcissus");

(c) where Latin words or phrases have been adopted into Welsh or English (e.g. "data", "agenda", "etc.").

3.19 Avoid vague and abstract words

(1) Legislation often uses general or abstract words which are capable of applying to a broad range of situations. Sometimes that breadth of meaning is exactly what the drafter needs, because a provision needs to cover a wide variety of circumstances. But if a word or phrase has a wide range of possible meanings, its impact will be less direct and readers will have to work out which meaning is intended. If more precise and concrete words can be used, they should generally be preferred.

(2) Various generally-worded phrases are used in legislation to describe relationships between things. In English, these include "in relation to", "in respect of", "with respect to", "as respects" and "as regards" (in Welsh, they include *"mewn perthynas â"*, *"mewn cysylltiad â"* and *"o ran"*). These phrases are often useful, and in some cases essential, precisely because they do not identify a specific type of relationship.

(3) But consider whether a more direct term could be used instead. For example, readers may grasp the meaning more quickly if you say that a section applies "to" certain cases than if you say that it applies "in relation to" those cases. Alternatives in other contexts may include "for" and "about".

(4) Later paragraphs of this guidance discuss some other potentially vague terms and suggest alternatives which may be more helpful to readers, in particular:

- paragraph 5.6: “affect”, “subject to”, “without prejudice”;
- paragraph 9.4: “prescribe”, “provide for”, “make provision about”.

3.20 “Such” and “any”

(1) The adjectives “such” and “any” raise a number of the issues discussed in this Chapter. Their use should be kept to a minimum.

(2) In English, “such” should not be used if a word like “a”, “the”, “this” or “that” will convey the same meaning. Similarly, *“o’r fath”* and *“y cyfryw”* should be avoided in Welsh wherever the definite article or a demonstrative adjective will do. In some cases these words can simply be omitted.

(3) Nevertheless, “such” can be useful shorthand to refer to something that is of the same type as, or similar to, a thing that has already been mentioned (e.g. “in such a case”. This sense of “such” can avoid the need to repeat long descriptions or qualifications, but take care that it is clear how much of the earlier wording is being picked up.

(4) Legislation has often used “such” to refer to a type of thing that is about to be described, for example by requiring a person to provide “such information as the Welsh Ministers may specify in regulations”. This makes clear that, if any information is specified, a person must provide all of it. But it is rather archaic.

(5) “Any” is sometimes used in the same sense, for example in a duty for the Welsh Ministers to consult “any persons they think appropriate”. But this is ambiguous, because it is not entirely clear whether they must consult every person they think appropriate, or could comply by consulting any one of those persons.

(6) If the intention is to require Ministers to consult everyone they think it is appropriate to consult, you can often use the definite article, for example by requiring consultation with “the persons they think appropriate”. However, the implication that there will always be people who must be consulted will not be appropriate if the policy is to allow Ministers to decide that there are none. The implication may be avoided by referring to “the persons (if any)...”.

(7) The implication that there will always be cases to which a duty applies may be particularly unhelpful if the duty depends on another person exercising a function. For example, a duty to pay “the fee” specified in regulations may imply that Ministers have to make regulations specifying a fee. If that is not the intention, the drafter can make clear that there will not necessarily be a specified fee by adding the words “if any”.

(8) Alternatively, this type of provision can often be restructured to avoid these issues. For example, a requirement for a person to pay the fee (if any) specified in regulations could instead be expressed as a power for the Welsh Ministers to make regulations specifying a fee that a person must pay.

(9) “Any” may be used to emphasise that something applies universally or without qualification, but should only be used in this way if the emphasis is necessary. For example, it may be appropriate to provide that “any person” may make or oppose an application, in order to make clear that the person need not have any connection with the subject-matter of the application. But if there is nothing in the context to suggest a limitation or qualification, just use the indefinite article in English (“a person”) and the noun without a definite article in Welsh (“*person*”).

Gender-Neutral Drafting

3.21 Avoid gender specific language

(1) The Presiding Officer’s Determination on Proper Form for Public Bills states that the English language text of a Bill “must not use gender-specific language unless the meaning of the provision cannot be expressed in any other way (e.g. the provision is one that relates only

to persons of a particular gender)". The use of gender-specific language is also one of the grounds upon which the Constitutional and Legislative Affairs Committee may report to the Assembly on a statutory instrument under Standing Order 21.2.

(2) Section 8 of the Legislation (Wales) Act 2019 provides that words denoting persons of a particular gender are not to be read as limited to persons of that gender, but you should not rely on this section to achieve a gender-neutral outcome[7]. Instead, you should ensure that legislation uses gender-neutral language which does not make assumptions about the gender of people performing a particular role (unless the role is limited to people of a particular gender).

(3) To ensure that the English language text of legislation is expressed in a gender-neutral way, avoid using:

(a) gender-specific pronouns ("he" or "she"), and

(b) gender-specific nouns (e.g. "fireman" or "manageress").

(4) Gender-specific language will nevertheless be appropriate where legislation can only apply to people of a specific gender, for example in legislation about pregnancy and childbirth. References to the Monarch should also be gender-specific and refer to the gender of the Monarch of the time (but references to other office holders should not be drafted by reference to the gender of the current office holder).

(5) These issues do not arise in the same way in the Welsh language text. In Welsh, nouns have grammatical gender, and pronouns follow the grammatical gender of the nouns to which they correspond. The grammatical gender of a noun or pronoun does not necessarily imply anything about the gender of a person.

(6) The paragraphs that follow give:

(a) examples of different techniques which a drafter of the English text of legislation can use to avoid gender-specific pronouns,

(b) guidance on avoiding gender-specific nouns in the English text of legislation and a summary of the relevant considerations in the Welsh text, and

(c) guidance on cross-references and amendments to older legislation where that legislation is not gender-neutral.

3.22 Specific techniques for avoiding gender-specific pronouns in English

(1) Try to avoid using "he or she" as an alternative to saying only "he" or "she". Although this formulation has been common in legislation, it can be awkward and is not truly gender-neutral. There are various other techniques that can produce gender-neutral language.

Rephrase to avoid the noun or the pronoun

(2) Consider whether it is possible to rephrase the sentence to avoid needing to refer back to the noun, or simply to omit the phrase containing the reference. For example:

A justice of the peace may issue a warrant if satisfied…

(Not "… if he is satisfied…")

The chairing member may resign…

(Not "… may resign his office…")

7 For material inserted into legislation to which Part 2 of the 2019 Act does not apply, similar provision is made by section 6(a) and (b) of the Interpretation Act 1978. See also paragraph 3.24 on gender-neutral language in amendments.

Use a participle

(3) Sometimes a participle can be used instead of a subject and verb. For example:

> When entering premises, an inspector must…
>
> (Not "When an inspector enters premises, he must...")

Use "who" or "whose"

(4) "Who" is a gender-free pronoun that can avoid the need for a reference back containing a gender-specific pronoun or a repeated noun:

> A person who contravenes subsection (1) commits an offence.
>
> (Not "A person commits an offence if he contravenes subsection (1).")

(5) Occasionally it will be possible to use "whose":

> A person whose application is refused may appeal.
>
> (Not "If a person's application is refused, he may appeal.")

Use "the", "that" or "those" instead of a possessive pronoun

(6) The article "the" or a determiner such as "that" or "those" can sometimes be used to replace the possessive pronoun, but this approach can sometimes make it harder to see the link between the person and the noun. For Example:

> The Commissioner must give the advice…
>
> (Not "... give his advice...")

> A person appointed as Deputy President of the Tribunal holds and vacates that position in accordance with the terms of appointment.
>
> (Not "... his terms of appointment.")

Use an impersonal or passive construction

(7) An impersonal construction may be appropriate:

> It is an offence for a person to…
>
> (Not "A person commits an offence if he...")

(8) The passive voice can be used instead of the active voice, but take care because the passive voice may be less clear:

> The application must be made before the end of 14 days beginning with the day on which the person…
>
> (Not "The person must apply before the end of 14 days beginning with the day on which he...")

Repeat the noun

(9) A noun can be repeated instead of using a pronoun:

> A person ceases to be a non-executive member of WRA if the person becomes a member of staff of WRA.
>
> (not "...if he becomes a member of staff of WRA.")

(10) However, this technique should be used with caution where the noun needs to be repeated several times or where the noun is a compound noun, as it can lead to awkward and cumbersome provisions.

Use a defined term or a label

(11) Rather than repeating a compound noun, it may be possible to use a shorter defined term, or even a letter label:

> If a person liable to a penalty ("P") has died, any penalty that could have been assessed on P may be assessed on the personal representatives of P.
>
> (Not "... on his personal representatives.")

(12) Although defined terms and letters can be useful, they can produce awkward provisions. They also require more work of the reader who has to substitute the actual wording intended for the defined term.

(13) A letter label may be particularly difficult for a reader, as it does not reflect normal usage, but can be helpful to distinguish between two or more different people.

Use "they"

(14) It may be possible to use a plural noun and then use the pronoun "they" (or their, them, themselves etc.) but be careful that this does not create an ambiguity. For Example:

> Participants may carry on regulated activities only if they hold a permit.
>
> (Not "A participant may ... only if he holds a permit.")

(15) Referring to a singular noun as "they" is natural in spoken English, but some people dispute its correctness so it should probably be avoided in legislation unless there is no better way of being gender-neutral.

3.23 Avoiding gender-specific nouns

(1) In the English language text of legislation, words denoting or implying a particular gender (such as words ending in "-man") should be avoided, unless reference to a particular gender is intended. For example, instead of "chairman", it is common to use "chair", "chairperson" or "chairing member".

(2) Drafters will need to form a view on what constitutes an acceptable gender-neutral alternative. In doing so, they should be aware that:

(a) words such as "testator", "manager" and "landlord" can be regarded as gender-neutral despite having feminine forms, as the feminine forms are falling out of use;

(b) the ending "-ess" should be avoided.

(3) In Welsh, nouns ending in *"-wr"* (equivalent to "-man" in English) are not necessarily male-specific even if there is a corresponding female form ending in *"-wraig"*, so it may be (and often is) appropriate to use the *"-wr"* ending. General policy is to use well-established terms rather than to coin new terms which may appear to be more gender-neutral, but there may be cases where an alternative to the *"-wr"* ending is more appropriate.

(4) One alternative is the *"-ydd"* ending, which is sometimes viewed as more gender-neutral; but it should be used only if it is natural to do so or there is no well-established term.

(5) Another alternative is to use pairs of masculine and feminine nouns (such as *"athro neu athrawes"*). But this should be avoided if possible, as it results in unnatural and cumbersome provisions requiring pairs of pronouns and alternative mutations.

(6) Legislative translators and drafters will need to form a view on whether a specific Welsh noun is gender-neutral.

3.24 Gender-neutrality in cross-references and amendments

(1) The same gender-neutral approach should normally be adopted in provisions which refer to or amend other legislation. Even if the existing legislation uses gender-specific language, cross-references and new text should use gender-neutral wording wherever it is possible to do so without causing confusion or requiring a disproportionate number of additional amendments.

(2) The fact that an existing statutory instrument uses gender-specific language may be a reason to consider revoking and remaking the instrument rather than amending it. Assembly scrutiny committees have criticised statutory instruments which have used gender-specific language in amendments to existing legislation. They have not regarded consistency with the original legislation as a justification for using gender-specific language; nor have they accepted arguments that inserting gender-neutral provisions might cause confusion or cast doubt on the original legislation.

References to Wales and other countries

3.25 Wales and England

(1) Schedule 1 to the Legislation (Wales) Act 2019 provides a general definition of "Wales" which will apply to references in Welsh legislation unless express provision is made to the contrary or the context requires otherwise. The definition includes both the local government areas in Wales and the territorial sea adjacent to Wales, and so covers the same area as the definition in the Government of Wales Act 2006[8].

(2) The definition of Wales in the 2019 Act will not always be the one that is suitable. For example, where an Act of the UK Parliament refers to Wales without giving a definition, "Wales" will have the meaning given by the Interpretation Act 1978, which includes only the local government areas and not the territorial sea. If the Welsh Ministers are making subordinate legislation under an Act in which Wales has that meaning, they may need to apply the same definition to the subordinate legislation.

(3) However, the fact that a piece of Welsh legislation does not apply to all of the territorial sea will not necessarily mean that it needs to define "Wales" differently from the 2019 Act. If other provisions in the legislation make clear that it applies only to things that happen on land or within a certain distance from the shore, it may not matter that "Wales" has a theoretically wider meaning in the legislation.

(4) The Legislation (Wales) Act 2019 defines "England" as having the same meaning as in the Interpretation Act 1978, which means that it consists only of the local government areas in England. If Welsh legislation needs to refer to anything that happens in any part of the territorial sea adjacent to England, it will have to make express provision to identify the relevant part of the sea.

(5) Where Welsh legislation mentions Wales and England together, it should put Wales first in both languages; for example, "in Wales or England" and *"yng Nghymru neu yn Lloegr"*. However:

(a) it may be appropriate to mention England before Wales in text that is being inserted into monolingual legislation which applies to England;

(b) the legal jurisdiction of England and Wales should always be referred to as "England and Wales" in English, and as *"Cymru a Lloegr"* in Welsh.

8 This definition will not apply to a reference to "Wales" that is inserted into legislation to which Part 2 of the 2019 Act does not apply (including any legislation enacted before 2020, and any Act of the UK Parliament). The definition in the Interpretation Act 1978, which does not include the territorial sea, will apply instead unless the contrary intention appears. If Wales needs to have the broader meaning in the inserted text, and the legislation being amended does not already make provision to that effect, a definition may need to be inserted. The usual approach has been to apply the meaning in section 158 of the Government of Wales Act 2006.

3.26 "Regional" and "national"

(1) The words "region" and "regional" may be used to refer to a part of Wales (generally a part consisting of more than one local authority area) or an area outside Wales. They should not be used to refer to the whole of Wales, unless existing legislation requires them to be used in that way.

(2) General policy for Welsh Government communications is that the word "national" should be used only in relation to Wales, and not in relation to the United Kingdom. This policy should also be followed in Welsh legislation, where it is possible to do so. But the word is often best avoided altogether.

(3) When establishing a body or office to exercise functions in relation to the whole of Wales, or providing for anything else to be done in relation to Wales as a whole, it may be appropriate to use a label that includes the word "national". For example, the Well-being of Future Generations (Wales) Act 2015 requires the publication of "national indicators" of progress towards the well-being goals, and the Public Health (Wales) Act 2017 requires a "national strategy" on preventing and reducing obesity.

(4) There will, however, be cases where it is necessary for Welsh legislation to use "national" to refer to the United Kingdom. The word appears in the names given to various UK-wide schemes by Acts of the UK Parliament, such as "national insurance" and the "national minimum wage". In addition, the term "national security" is often used in legislation without definition and refers to the security of the United Kingdom[9]. There is no objection – and there may be no alternative – to using these established terms in Welsh legislation.

(5) In the cases mentioned above, it is clear whether the word "national" is referring to Wales or to the United Kingdom. For example, the Acts that provide for national indicators and a national strategy make clear how those things relate to Wales.

(6) However, phrases that include the word "national" may create uncertainty if they are used without explanation. It may not be clear whether "national" refers to Wales or to the United Kingdom; and even if it is clear which country it refers to, the precise relationship may need further explanation. For example, a requirement to publish a notice in a "national newspaper" might leave doubt about whether the notice could be published in a newspaper that circulates only in Wales or would have to be published in a newspaper with UK-wide circulation. Or it might be unclear whether "national policy" meant policy for the whole of the United Kingdom or only for Wales (or included both).

(7) If phrases that include the word "national" are used, they may need to be defined to avoid ambiguity; but it may be better to use different descriptions that avoid the word "national" altogether. Rather than referring to a national newspaper, it might be clearer and simpler to refer to a newspaper circulating generally in Wales or in the United Kingdom; and instead of referring to national policy, it might be necessary to say more about who makes the policy or where it applies, for example by referring to policy for Wales or the policy of the Welsh Ministers.

3.27 "Welsh"

(1) The word "Welsh" avoids some of the ambiguity of "national" because it can only be referring to Wales and not the United Kingdom. However, it does not identify a particular relationship with Wales, so it may still be necessary to define phrases that include the word "Welsh". For example, Part 2 of the Environment (Wales) Act 2016 sets targets for the reduction of "net Welsh emissions" of greenhouse gases, but makes detailed provision about which emissions are counted.

9 The interests of national security may also extend to protecting the security of other States: see *Secretary of State for the Home Department v Rehman* [2003] 1 AC 153.

(2) Labels that include the word "Welsh" might also be read as implying that there is another version of the same thing that is not Welsh. Acts of the UK Parliament may use labels like "Welsh taxpayer" or "Welsh Consolidated Fund" to distinguish arrangements in Wales from similar arrangements elsewhere in the United Kingdom. But the implication that such a distinction is being drawn might be unwelcome when Welsh legislation is creating arrangements that apply only in Wales.

(3) Nevertheless, Welsh legislation will sometimes need to use expressions containing the word "Welsh" which have been defined in Acts of the UK Parliament, such as "Welsh family proceedings officer" or "Welsh fishing boat". This may be more common when the Welsh Ministers are making subordinate legislation under an Act of the UK Parliament.

(4) In English, the word "Welsh" may be ambiguous because it can refer to Wales or the Welsh language. The English language text of legislation should therefore use the phrase "Welsh language" when describing anything that is in Welsh (e.g. "the Welsh language text" of legislation) or referring to the language itself (e.g. "the use of the Welsh language"). In Welsh, this issue does not arise because *"Cymraeg"* refers only to the language, so there is no need to include the word "*iaith*"[10].

References to bodies and individuals

3.28 Referring to a "person"

(1) Schedule 1 to the Legislation (Wales) Act 2019 defines "person" as including "a body of persons corporate or unincorporated". This definition will have effect unless express provision is made to the contrary or the context requires otherwise[11].

(2) There is therefore a presumption that references to "persons" are not limited to individual human beings (or "natural persons") but also cover bodies such as companies, statutory corporations, partnerships and unincorporated associations. This means that it is unnecessary to refer to a "person or company" or a "person or body" unless the context might require "person" to be read narrowly.

(3) Where provisions are intended to refer only to natural persons, that intention will often be clear from the context. But if it might not be obvious, consider using a different term such as "individual".

3.29 Statutory and other bodies are singular nouns

(1) Public bodies and other organisations should normally be treated as singular nouns, whether or not they are incorporated. For example, refer to a local authority, tribunal or committee as "it" rather than "they".

(2) The names of some bodies include plural nouns. If the plural noun is part of a description of the body's role, such as Qualifications Wales, refer to the body in the singular. But if the name of the body describes it as a group of individual members or appointees, such as "the Commissioners" or "the trustees", refer to the body in the plural.

(3) In addition, when textually amending legislation that already uses the plural, it may be necessary to follow suit in order to avoid confusion.

3.30 Provisions establishing bodies and offices

(1) Where a provision itself creates a statutory corporation or office, it should provide that the corporation or office "is established" rather than using a formulation like "there is to be".

10 These points apply equally to the words "English" and *"Saesneg"*.

11 Schedule 1 to the Interpretation Act 1978 defines a "person" in the same way for references that are inserted into legislation to which Part 2 of the 2019 Act does not apply.

(2) A provision restating earlier legislation that established a body or office should provide that the body or office "continues in existence". If the provision is also changing the name of the body or office, it should provide that it "is renamed" with the new name. And if the new provisions completely supersede the provisions that originally established the body or office, the original provisions should be repealed.

(3) A statutory body or office will usually be given names in both the Welsh and English languages. Where that is the case, each language version of the provision establishing or continuing the body or office should give its name in that language alone. In a bilingual Act or instrument, there is no need for either language version of the provision to include the name in the other language.[12]

Numbers, dates and units of measurement

3.31 Cardinal Numbers

(1) Use figures for numbers above 10.

(2) Use figures for numbers up to and including 10 in the following contexts:

(a) times, periods of time, ages and dates (see also paragraph 3.33);

(b) percentages, sums of money and units of measurement (see paragraph 3.34);

(c) calculations, formulas and numbers containing decimal points;

(d) property numbers in addresses.

(3) In other contexts, numbers up to and including 10 can be spelled out in words or expressed as figures, depending on what seems more natural or appropriate in the particular context.

(4) A number that begins a sentence should normally be spelled out in words.

(5) Avoid mixing words and figures when referring to things of the same kind in the same context. If numbers up to 10 and above 10 are used together, all of them should normally be given in figures.

(6) Fractions should be in figures in calculations or formulas, but spelled out in text (e.g. "one third").

(7) In the Welsh language text of legislation, the traditional vigesimal (*ugeiniol*) system should be used rather than the decimal (*degol*) system when using words for numbers. Detailed guidance on house style for referring to numbers in the Welsh text can be found in the Translation Service's *Canllawiau Arddull Cyfieithu Deddfwriaethol*.

3.32 Ordinal numbers

(1) Ordinal numbers above 10th should not be spelled out in words. For example, say "the 28th day" rather than "the twenty-eighth day".

(2) Decide whether to spell out ordinal numbers up to and including 10th in the light of what seems more natural or appropriate in the context.

(3) The English endings -st, -rd and -th and the Welsh endings *-ydd*, *-fed*, *-ed*, *-ain* etc. should appear in normal type, not in superscript.

3.33 Dates

(1) Dates should be stated in the form "1 April 2019".

(2) Note that the day of the month should always be given as a figure, without the definite article and without the English endings -st, -rd and -th or the Welsh endings *-ydd*, *-fed*, *-ed*, *-ain* etc.

12 However, if the provision establishing a body is being inserted into an Act of the UK Parliament, the provision will exist only in English and will need to give the name of the body in both languages. See section 81 of the Environment (Wales) Act 2016 for an example.

3.34 Units and symbols

(1) For percentages, use "%" rather than "per cent".

(2) For sums of money, use "£" rather than "pounds" and set out the figure in full. For example, say "£10,000,000" instead of "ten million pounds".

(3) For distances, weights and other measurements, it is acceptable to give the full names of units of measurement (e.g. "500 square metres" or "15 degrees Celsius" or to use standard symbols and abbreviations (e.g. "500 m^2" or "15ºC").

Chapter 4: Definitions

Introduction

4.1 Overview of Chapter

This Chapter deals with provisions of Assembly Acts and subordinate legislation about the meanings of terms used elsewhere in the legislation. It includes guidance on when to use definitions, how to write them and where to put them.

4.2 When to use definitions

(1) Definitions in legislation may serve the following purposes:

(a) defining key concepts that the reader will need to understand in order to make sense of the legislation (such as the meaning of "additional learning needs" in legislation about educational provision for young people with additional learning needs);

(b) creating acronyms or other labels for the sake of drafting convenience, in order to avoid repeating long phrases (for example, creating the label "TCMA" for the Tax Collection and Management (Wales) Act 2016);

(c) clarifying, broadening or narrowing the meaning of words or phrases to ensure that they are understood in particular ways in a piece of legislation (for example, spelling out that in that legislation a "child" means a person under 18, or a "lease" includes a sublease).

(2) A definition should not be included unless it will aid clarity or certainty. If a term is intended to have its ordinary dictionary meaning in an Act, or if it is obvious from the context what the term is referring to, there should be no need for a definition. For example, in provisions about applications for licences, it may be safe to refer to "the applicant" and to rely on the context without including a definition.

(3) Consider whether including a definition will assist readers of the legislation. Using a definition to create a label for a complicated concept can help by breaking up the material, but may make it harder for the reader to reconstruct the story. And it may not be helpful to adjust the meaning of an everyday word to cover things that would not otherwise be included (or to exclude things that the word would normally cover).

4.3 Other points relating to the use of definitions

(1) An Act or instrument should not include a definition of a term unless it uses the term.

(2) A definition should not include significant operative material. Powers, duties and procedural requirements should be set out in substantive provisions rather than in definitions. For example, it is acceptable to say that "regulations" means regulations made by the Welsh Ministers, but it would be going too far to include the Assembly procedure in the definition.

(3) Before including a definition of a term that is used only in another definition, consider whether it will be helpful to do so. On the one hand, this approach can require more work of the reader to understand the text. On the other hand, "layering" definitions in this way may be the best way to explain a complicated set of concepts or to make the principal definition manageable.

Drafting definitions

4.4 Choice of label

(1) Make sure that the terms you define are appropriate for their intended meanings. Avoid labels which are misleading and do not give defined terms a meaning the reader would not expect. For example, a provision that "references to fingerprints include footprints" would be liable to confuse readers of the legislation.

(2) Bear in mind that the natural meaning of the term that is defined may influence its interpretation, at least if there is a need to resolve ambiguity in the definition.[13]

(3) When creating a label, try to use a term that gives an indication of the meaning. Instead of using a bland, uninformative term like "the relevant person", consider whether there is another term that would be more helpful to the reader (but without being distracting or influencing the meaning in an undesirable way).

(4) It may be convenient to use letters or acronyms as labels for people or concepts, particularly where provisions contain numerous references to different people or where they provide for calculations (e.g. in a formula). Acronyms can avoid the need to repeat long names or phrases, but may be less helpful for readers. Always consider whether the acronym will be readily understood by readers.

(5) Where acronyms or letters are used as labels, it is probably more helpful to use the initials of the words they represent. This means that the English and Welsh language texts will often need to use different letters. For example, if the English text used "C" for claimant, the Welsh text would use *"H"* for *hawlydd*. Or if the English text used "TCMA" as a label for the Tax Collection and Management (Wales) Act 2016, the Welsh text would use *"DCRhT"* for *Deddf Casglu a Rheoli Trethi (Cymru) 2016*.

(6) Using the same label for different things in the same piece of legislation may confuse readers (and goes against the drafting principle of consistency).

4.5 Exhaustive and non-exhaustive definitions

(1) How a definition is expressed will depend on whether or not it is exhaustive.

(2) An exhaustive definition provides a complete statement of the meaning of an expression. A provision defining a key concept or creating a label will usually be of this type.

(3) A non-exhaustive definition deals only with the matters in respect of which the meaning of the term requires clarification or adjustment. It may be an inclusive definition, which is intended to broaden the meaning of a term or to clarify that it includes certain things; or an exclusive definition, which is intended to narrow the meaning of a term or to clarify that it does not include certain things. The term will then have its ordinary or general meaning as modified by the definition.

(4) It is possible for a definition to use a mixture of the two approaches, by stating that a term has a particular meaning, and then clarifying that certain things are included in the definition or excluded from it. This approach should generally be adopted only if there is no other satisfactory way to avoid ambiguity in an exhaustive definition.

4.6 Form of words: exhaustive definitions

(1) Exhaustive definitions are generally in the following form:

> "Child" means a person who is aged under 18.

(2) It can also be acceptable to give definitions in the following narrative form:

> The effective date of a land transaction for the purposes of this Act is the date of completion.

13 See, for example, *MacDonald (Inspector of Taxes) v Dextra Accessories Ltd* [2005] 4 All ER 107.

A reference in this Part to the discontinuance of a maintained school is a reference to the local authority ceasing to maintain it.

(3) The narrative approach may be helpful when defining a longer phrase that appears in different forms in the legislation, as it may be less likely to suggest that the phrase will always appear in the form used in the definition. This is a particular issue for bilingual legislation, as the different sentence structures of Welsh and English make it more likely that a phrase will have to be broken up or modified in at least one text.[14]

(4) As an alternative to defining a longer phrase, it may be possible to reduce the number of words that need to appear in the defined term itself, by including a parenthetical description of the context in which the definition applies. For example:

"Parent", in relation to a child, means …

(5) However, this approach interrupts the normal word order of a sentence. Always consider whether the words in parentheses are really necessary.

(6) If the things mentioned in the definition are intended to be an exhaustive statement of the meaning of the term, do not say that the term "includes" those things, as that may be taken to imply that there are other things that are also covered by the term.

(7) Instead of giving a definition in a separate provision, it is also acceptable (and may be more convenient) to assign a label to a concept by including the label in brackets after the first reference to that concept. For example:

If the amount is not paid on or before the date by which it is required to be paid, the amount carries interest (referred to in this Part as "late payment interest") …

NRW may make an agreement with a person who has an interest in land in Wales about the management or use of the land (a "land management agreement") …

(8) When defining a term in this way, take care to ensure that it is completely clear which words in the provision constitute the definition of the term.

4.7 Form of words: non-exhaustive definitions

(1) An inclusive definition (stating that a term includes certain things that might otherwise fall outside its ordinary meaning) generally takes the following form:

"Rent" includes a sum payable under a licence.

(2) An exclusive definition (stating that a term does not include certain things that might otherwise be included) generally takes the following form:

"Unincorporated body" does not include a partnership.

(3) It is also possible to use the narrative approach. For example:

References to documents found on the premises include—

(a) documents stored on computers or other electronic devices on the premises, and

(b) documents stored elsewhere that can be accessed by computers or other electronic devices on the premises.

(4) When using the narrative approach, you can simply say that "references to x include y". There is no need to say that references to x "include references to y".

14 Defining a phrase in narrative form will not necessarily alter the legal effect of the definition, as section 9 of the Legislation (Wales) Act 2019 already means that the definition will apply to other grammatical forms and modifications of the phrase (see paragraph 4.9). But consider which method of setting out the definition is likely to be most helpful to the reader.

(5) Saying that a term "includes" certain things will not necessarily mean that it is interpreted as covering other similar things. The fact that particular things have been mentioned may be taken to imply that other things of the same kind are excluded, in the absence of any other reason to have mentioned only some of them. If the term is intended to cover other things, consider whether any more needs to be said.

4.8 Making clear when a definition applies

(1) It is important to make clear when each definition will apply. So definitions should generally include words like "in this Act" or "in this section" unless there is no room for doubt. Make sure that the definition is applied to the correct provisions.

(2) In most cases, "for the purposes of this Act, x means y" will have the same meaning as "In this Act, x means y". Unless there is a particular reason to use the "for the purposes of" formulation, "in this Act" should generally be preferred as being shorter.

(3) Whether a definition in an Act will apply to other legislation or contexts is unlikely to be determined by whether the definition is expressed as applying "in" or "for the purposes of" the Act containing it. If the definition is intended to apply (or not to apply) in other contexts, you may need to make that clear in some other way.

(4) Prospective definitions such as "In this section and the next section, x means y" may give rise to a risk that readers of the second section will miss the definition in the first. It may be more helpful for the first provision to give a general definition which applies to the whole Bill or instrument and can be indexed in the general interpretation provision; or if that does not seem appropriate, consider whether the second provision should repeat the definition or provide that the term has the meaning given by the first provision.

(5) It is generally not helpful to say that definitions apply "unless the context otherwise requires". Do not use this wording at all if there are no cases where the context requires otherwise. And if there is such a case, try to explain where the definition does or does not apply rather than leaving it to the reader to work it out.

4.9 Application of definitions to related terms

(1) It is generally unnecessary to provide that a definition of a term applies to other forms or variations of that term. Section 9 of the Legislation (Wales) Act 2019 provides that "other parts of speech and grammatical forms or variations" of a defined term are to be interpreted in accordance with the definition, and has effect unless express provision is made to the contrary or the context requires otherwise.[15]

(2) For example, if an Act or instrument defines "the register", section 9 means that the default position is that grammatically related terms like "to register" and "registration" will be interpreted by reference to that definition.[16] There will be no need for the definition of "the register" to provide that "related expressions are to be interpreted accordingly" in order to achieve this result[17].

(3) Always consider whether section 9 of the 2019 Act will give the right result, and whether it will provide a sufficiently clear and precise meaning for a related term.

15 Various provisions of the 2019 Act are excluded "so far as … the context requires otherwise" because it would be impossible for the 2019 Act to identify in advance all of the contexts in which its general interpretation provisions should or should not apply. This is a rare exception to the recommendations in paragraph 4.8(5).

16 For a detailed discussion of the expressions to which the section will apply, see Annex A to the letter of 8 March 2019 from the Counsel General and Brexit Minister to the Chair of the Constitutional and Legislative Affairs Committee, at **www.senedd.assembly.wales/documents/s86243/**.

17 The Interpretation Act 1978 does not contain a provision equivalent to section 9. It is therefore possible that a provision of the kind mentioned in this paragraph could be required when inserting text into legislation to which Part 2 of the 2019 Act does not apply (including any legislation enacted before 2020, and any Act of the UK Parliament).

Definitions in other legislation

4.10 General definitions in the Legislation (Wales) Act 2019

(1) Schedule 1 to the Legislation (Wales) Act 2019 contains general definitions of various terms, which will apply to Welsh legislation unless there is express provision to the contrary or the context requires otherwise[18]. The terms defined in Schedule 1 include "land", "person", "Wales" and "writing". They also include terms relating to legislation (such as "enactment" and "subordinate legislation"), terms relating to the European Union and the UK's withdrawal, and the names of various public bodies.

(2) Where an Act or instrument uses a term that is defined in Schedule 1 and intends the term to have the same meaning, it should not repeat the definition. If it seems important to draw readers' attention to a particular definition in Schedule 1, that should be done in the explanatory material accompanying the legislation. In a statutory instrument, the information may also be given in a footnote.

4.11 Applying definitions from other legislation

(1) If a Bill or statutory instrument uses a term which is intended to have the meaning it has been given in an existing piece of legislation, always consider whether it would be better to restate the definition in full rather than applying the existing definition. (Do not do both.) Copying the definition out may be more helpful if it is important or relatively short; and if the existing legislation was enacted only in English, restating the definition will ensure that there is also a version in Welsh.

(2) One reason for applying an existing definition may be to pick up future changes to the definition. If an Assembly Bill or Welsh subordinate instrument provides that a term has the meaning given by another enactment, the default position under section 25 of the Legislation (Wales) Act 2019 is that this will include future amendments to the other enactment that affect that meaning. If the Bill or instrument is **not** intended to be affected by changes to the other legislation after the Bill or instrument is enacted, it will be necessary to make that clear[19].

(3) There are various ways of borrowing definitions from other legislation. The following formulations might be used to apply another Act's definition of a term:

> In this Act, "well-being" has the meaning given by section 2 of the Social Services and Well-Being (Wales) Act 2014 (anaw 4).
>
> In this Act, "well-being" has the same meaning as in the Social Services and Well-Being (Wales) Act 2014 (anaw 4) (see section 2).

(4) If the first formulation will produce the desired effect, it should be preferred as being more concise and specific. But the second approach may be more appropriate if the meaning of the term in the earlier legislation has to be constructed from a number of different provisions, and it may also be better if you want to attract case law that has elaborated on the definition.

(5) It is also possible to adopt a narrative form, and this may be appropriate where the expression being defined is a longer phrase, or where the definition is contained in a number of different provisions. For example:

> The reference to acting in accordance with the sustainable development principle is to be interpreted in accordance with section 5 of the Well-being of Future Generations (Wales) Act 2015 (anaw 2).

18 When amending legislation to which Part 2 of the 2019 Act does not apply, bear in mind that the definitions in Schedule 1 to the Interpretation Act 1978 will apply instead of those in Schedule 1 to the 2019 Act. There are a number of differences between the definitions in the two Schedules, as outlined in paragraphs 60 to 64 of the Explanatory Notes to the 2019 Act.

19 Section 25 will not apply to a referential definition that is inserted into legislation to which Part 2 of the Legislation (Wales) Act 2019 does not apply (including any legislation enacted before 2020, and any Act of the UK Parliament). When inserting a definition that refers to another enactment, bear in mind that section 20(2) of the Interpretation Act 1978 will not necessarily have the same effect as section 25 of the 2019 Act.

(6) If you are applying a definition from legislation that exists only in English, the way to do this in the Welsh language text is to refer to the English definition. For example, if the English language text says:

> In this Act, "hospital" has the meaning given by section 206 of the National Health Service (Wales) Act 2006 (c. 42).

the Welsh language text will need to say:

> Yn y Ddeddf hon, mae i "ysbyty" yr ystyr a roddir i "hospital" gan adran 206 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 (p. 42).

(7) Note the following points of style:

(a) It does not matter whether you refer to the meaning given "in" or given "by" another provision.

(b) Avoid formulations like "x means an x within the meaning of Act Y". This may not be very clear to readers, and is just a more complicated way of saying "x has the same meaning as in Act Y".

(c) Instead of providing in the English language text that a term is to be "construed" in accordance with another provision, consider the more familiar "interpreted" or "read". (In Welsh, *"dehongli"* is used for both "construe" and "interpret".)

4.12 Giving terms in subordinate legislation the same meaning as in the parent legislation

(1) The Legislation (Wales) Act 2019 does not contain a provision corresponding to section 11 of the Interpretation Act 1978, which provides that expressions used in subordinate legislation have the meaning which they bear in the Act or Measure (or the retained direct EU legislation) under which the subordinate legislation is made. A Welsh subordinate instrument should therefore include express provision wherever the intention is to attract meanings from the parent legislation.

(2) Where a Welsh subordinate instrument uses terms that are defined in the parent legislation, and all that is required is to apply those definitions to the terms in the instrument, the drafting considerations will generally be the same as in any case where a term is intended to have the meaning it has been given by another piece of legislation: see paragraph 4.11. Typically, repeating these terms in the subordinate instrument would be most helpful to the reader.

(3) However, it may not always be practicable to list every definition in a parent Act which is relevant to an instrument. There may also be cases where the intention is not merely to apply definitions set out in the parent Act to the instrument, but also to rely on other ways in which words and expressions used in the parent Act have acquired particular meanings. For example, the parent Act may use a term without defining it, but there may be an understanding about the meaning of that term derived from the context of the Act or from case law.

(4) In these situations, it may be appropriate for the instrument to include a provision similar to section 11 of the Interpretation Act 1978 which gives terms used in the instrument (or in a particular Part or provision) the same meaning that they have in the parent Act (or in a particular Part or provision of the Act). For example:

> Expressions used in [these Regulations] [this Part] and in the Housing (Wales) Act 2014 (anaw 7) have the same meaning as in that Act.

(5) One effect of this kind of provision is that, if the parent Act uses a term that is defined in Schedule 1 to the Legislation (Wales) Act 2019 but uses it with a different meaning from that in Schedule 1, the meaning of the term in the instrument will be the one in the parent Act rather than that in Schedule 1. If that is not the intention for a particular term, it will be necessary to make an exception for that term.

(6) This approach to applying meanings is not entirely satisfactory for instruments made under Acts of the UK Parliament or retained direct EU legislation, because terms used in the Welsh language text of the instrument will not appear in the parent legislation. The Welsh text should instead provide that expressions used in the instrument have the same meaning as the corresponding English expressions in the parent legislation.

(7) The provisions applying the meanings of terms in the parent Act will therefore be different in the Welsh and English language texts of the instrument. For example:

> Expressions used in these Regulations and in the Plant Health Act 1967 (c. 8) have the same meaning as in that Act.
>
> Mae i ymadroddion Cymraeg yn y Rheoliadau hyn sy'n cyfateb i ymadroddion Saesneg a ddefnyddir yn Neddf Iechyd Planhigion 1967 (p. 8) yr un ystyr â'r ymadroddion hynny yn y Ddeddf honno.

(8) This type of provision still requires some work by the reader of the Welsh text to identify the terms whose meanings are being applied. However, it is the best that can be done where the parent legislation was not made in Welsh, if it is not feasible for the instrument to apply specific definitions from the parent legislation.

Location of definitions

4.13 Where to put definitions in Assembly Acts

(1) Where a defined term is used in only one provision of an Act, the definition should appear in the same provision (e.g. the same section or Schedule paragraph) and apply only to that provision.

(2) Where an Act uses a defined term in various places, the definition will need to apply more generally. It may be given in a general interpretation section, which will be one of the general provisions towards the end of the Act, or it may appear elsewhere. The decision about the location of the definition should be governed by what is likely to be most helpful to the reader, which will depend on the importance of the term.

(3) If the term is so important that the reader will need to have read the definition to understand what is being said, the definition should appear either in the first place where the term is used or in an introductory definitions provision at the start of the Act (or of the relevant group of provisions).

(4) Where a term that is used in more than one provision has been defined up front in this way, the definition should still be signposted towards the end of the Act in the general interpretation provision or index of defined terms (if there is one). A signpost to a definition will take the following form:

> "Additional learning needs" has the meaning given by section 2.

(5) Minor definitions can often be dealt with in the general interpretation section towards the end of the Act. Definitions which clarify or adjust the meaning of ordinary terms can usually be left to the end, unless there is a danger of the reader being seriously misled.

(6) A general interpretation section (which is normally headed "Interpretation") is therefore usually a mixture of minor definitions and signposts to definitions that have already been given. This means that readers can see in one place whether any term is defined or not.

(7) An "Index of defined expressions" or "Index of defined terms" just lists terms which are defined elsewhere and the provisions which define them. It may be helpful in a piece of legislation which contains a large number of definitions. It may sometimes be appropriate to have both a general interpretation section which sets out minor definitions in full, and an index which lists all of the defined terms used in the Act.

4.14 Where to put definitions in statutory instruments

(1) As in an Act, the definition of a term that is used in only one provision of a statutory instrument should appear in the same provision (e.g. the same regulation or article).

(2) Where a defined term is used in more than one provision of an instrument, the decision about where to locate the definition should be based on what will be most helpful to readers, as with Acts.

(3) As a matter of convention, a general interpretation provision in a statutory instrument appears near the start of the instrument rather than towards the end. An alternative which is occasionally found in instruments that contain very large numbers of definitions is to list them in a Schedule introduced by a provision near the start of the instrument.

(4) A general interpretation provision lists all of the defined terms that are used throughout an instrument (and usually has the heading "Interpretation" as in an Act). Nevertheless, it may be more helpful to readers to introduce and define a term in a substantive article or regulation, particularly if the definition is long or complex. In that case, the general interpretation provision should include a signpost to the definition. For example:

> "Eligible student" has the meaning given by regulation 6.

(5) It may be appropriate to give a definition in the preamble to an instrument or in a footnote, for example by creating an acronym to avoid repeating the name of an Act. But only do this for references to the term in the preamble or footnotes respectively, not for references in operative provisions. The definition of a term used in the body of the instrument must be given in an operative provision (such as a regulation or article). Conversely, a term which is only used in the preamble or in footnotes should not be defined in an operative provision.

Lists of definitions

4.15 Format of lists of definitions

(1) In some cases it may make sense for an interpretation provision to list definitions in conceptual order using a separate numbered provision for each definition, for example where each definition builds on the previous one. But in most cases definitions should be listed alphabetically using unnumbered paragraphs.

(2) The definitions are ordered according to the English alphabet in the English language text and according to the Welsh alphabet in the Welsh language text. In both languages, the definite article is ignored but prepositions are counted. Definitions beginning with numbers, such as a definition of the "2050 emissions target" in English, should appear first and be listed in numerical order.

(3) In a statutory instrument, definitions which are labels for other pieces of legislation (such as "the 2018 Act") should go at the beginning of the list rather than in alphabetical order. Primary legislation should be listed before secondary, and within each category enactments should be listed in chronological order.

(4) Definitions set out in unnumbered alphabetical lists may appear in different orders in Welsh and in English. This gives rise to the following drafting issues.

(5) First, the definitions should not be written in a way that assumes they will appear in a particular order. For example, if the first definition in English mentions an Act by name and the second definition refers back to "that Act", the same approach will not work in Welsh if the order of the definitions is reversed. To reduce the risk of mistakes, it may be better to give the full title of the Act in both definitions.

(6) Secondly, to make it easier to compare the Welsh and English language versions of an unnumbered list, each defined term should be followed by a reference to the term in the other language, which should be given in brackets and in italics. The definitions will therefore appear like this:

"local authority" (*"awdurdod lleol"*) means …

ystyr "awdurdod lleol" (*"local authority"*) yw …

(7) This applies only to unnumbered lists. If each definition is given in a separate numbered provision, the terms in the other language should not be included. The numbering will ensure that the list appears in the same order in both languages.

(8) In a provision that contains a list of definitions, each entry should end with a semi-colon, with no conjunction.

Chapter 5: Cross-references and relationships between provisions

5.1 Overview of Chapter

(1) The relationships between statutory provisions should be clear, but that does not necessarily imply that there should be cross-references between them. This Chapter gives guidance on when it may be appropriate to include cross-references and on ways of making their purposes clear.

(2) See Chapter 6 for detailed guidance on wording to use when citing another piece of legislation, and Chapter 7 for guidance on drafting amendments to other legislation.

5.2 Use of cross-references

(1) Cross-references to other provisions or pieces of legislation can be hard work for the reader, so try to minimise their use. You can sometimes avoid them by re-ordering the material.

(2) It is generally more helpful to refer to a substantive idea or rule, rather than to the statutory provision containing it (which is unlikely to be of interest to readers). And provisions can generally be read in the light of what has gone before them, at least within the same section or regulation, so it may not be necessary to refer back to an earlier provision.

> For example, section 143(1) of the Tax Collection and Management (Wales) Act 2016 provides that a taxpayer who fails to comply with certain record-keeping requirements is "liable to a penalty". There is an exception if the Welsh Revenue Authority has other evidence proving the matters that would have been proved by the missing records.
>
> The exception could say "Subsection (1) does not apply" in those circumstances. Instead, subsection (2) continues the proposition without a cross-reference. It simply says "But no penalty is incurred" if there is other evidence proving the matters. This is more helpful than referring to subsection (1).

(3) Using definitions can be another way to reduce the need for cross-references, for example by defining a "licence" as meaning a licence issued under a particular section so that there is no need to keep referring to that section. See Chapter 4 for guidance on the use of definitions.

5.3 Forward references and signposts

(1) It can be unhelpful for a provision to refer to material which the reader needs to understand at that point, but which does not appear until later in the Act or instrument. A forward reference of this kind may well be a sign that the material should be reordered.

(2) However, it is sometimes helpful to signpost later (or earlier) material which is relevant but which readers will not necessarily need to understand at that point. That may include material about matters such as procedure or interpretation, or about specific cases or exceptions. For example, section 194 of the Social Services and Well-being (Wales) Act 2014 makes general provision about the meaning of "ordinary residence" but also provides in subsection (7):

> See also sections 185(1) to (3) and 186(2) for provision as to the ordinary residence of persons in prison, youth detention accommodation or bail accommodation etc.

5.4 Referring to provisions in the same legislation: "above", "below", "of this Act" etc.

(1) Where a provision of an Act or instrument refers to another division of the same Act or instrument, it is usually enough to refer to the other division by number, e.g. as Part 1, section 2 or regulation 3.

(2) Do not use expressions like "section 2 above" or "regulation 3 below".

(3) You should generally avoid expressions such as "section 4 of this Act", "subsection (5) of this section" and "paragraph 6 of this Schedule". However, this type of wording may provide helpful clarification in some cases:

(a) It may be appropriate to refer to a provision "of this Act" or "of these Regulations" where it is necessary to distinguish between provisions of the Act or instrument in question and provisions of another piece of legislation (e.g. where an Act refers to a section of another Act immediately before or after mentioning one of its own sections).

(b) Where an Act or instrument is divided into Parts and also contains Schedules that are divided into Parts, it may be desirable for a provision in one of those Schedules to make clear whether it is referring to a Part of the Schedule or of the Act.

(c) Where an Act or instrument contains two or more Parts that are divided into Chapters, and a provision in one of those Parts refers to another Chapter within the same Part, it may be helpful to spell out that the reference is to the relevant Chapter "of this Part".

(4) When inserting material into an existing piece of legislation which uses "above" or "below" or any of the other expressions mentioned in this paragraph, it is not necessary to use those expressions in order to be consistent with the style of the original.

5.5 "The provisions of"

(1) It is common to use the word "provisions" to refer to the contents of a piece of legislation or of a division within it. Referring to the "provisions" of an Act or section can cover anything in it, because the term is not limited to any particular division of text. A "provision" may mean a whole Act, a section or smaller unit of text, or even a rule or concept that does not consist of a specific unit of text.

(2) A reference to "any provision of this Act" may therefore be a useful way of referring generally to anything that is contained in the Act. On the other hand, this kind of formulation may be less helpful to the reader than the drafter, so consider whether it is possible to be more specific.

(3) Where the words "the provisions of" are used to refer to the whole of an Act or division of text, the words are generally unnecessary and can usually be omitted. For example, there is no need to say that "the provisions of section 2 of the Act apply". The same meaning can be conveyed in fewer words by saying "section 2 of the Act applies".

5.6 Showing relationships between provisions: "subject to," "despite," "without prejudice" and "in particular"

(1) Where an Act or instrument contains provisions that might conflict with one another, or with provisions in another piece of legislation, it has been common to indicate the relationship in the following ways:

(a) by saying that a provision which is qualified or overridden by another provision is "subject to" that provision;

(b) by saying that a provision which qualifies or overrides another provision applies "notwithstanding" or "despite" the other provision;

(c) by saying that a provision which is not intended to qualify or override another provision is "without prejudice to" or "does not affect" that other provision.

(2) Always consider whether you can do without wording of these kinds and instead rely on the context to make the relationship between the two propositions clear. It will often be possible to do so where a qualifying proposition is close to the proposition that it qualifies. For example, if subsection (1) of a section sets out a general rule and subsection (2) creates an exception, there should be no need for subsection (1) to say that it is "subject to subsection (2)".

(3) In this situation, you could indicate that the second proposition qualifies the first by beginning the second subsection with "But". This approach should be not be over-used, as over-emphatic words can distract the reader. And it will not be necessary if it is already obvious that the second proposition qualifies the first.

(4) If it is necessary to clarify the relationship between two provisions, saying that one of them applies "subject to," "despite" or "without prejudice to" the other, or that it "does not affect" the other, is not very precise. These phrases are sometimes convenient for drafters but may not be helpful to readers. Try to say something more specific about the way in which one provision does or does not affect the other.

(5) If one proposition is intended to be qualified by another, you might state the cases to which a different rule applies and signpost the provision dealing with those cases. For example:

> This section does not apply to a child who is looked after by a local authority (see sections 17 and 18).

(6) Alternatively, you could add an exception at the end of the first proposition beginning "except" or "unless". If the relationship cannot easily be described, consider using another expression to show that there is a qualification (e.g. "but see section x"). Do not use "provided that" to introduce qualifications.

(7) To clarify that one provision does not qualify another, try to say something specific about the effect you are trying to avoid. For example, if there is a concern that including specific powers might lead to general powers being read narrowly, you might say that the specific powers do not limit the general ones (or that they are examples of the general powers, where that is the intention). If you do not know all of the possible effects or they are too hard to describe, it may be enough to say that one provision does not affect the other.

(8) Legislation often uses the words "in particular" when introducing examples of specific things that come within a general provision, to indicate that the examples do not limit the scope of the general provision. The Court of Appeal confirmed in 2017 that *"The natural and ordinary meaning of the words 'in particular' is 'especially' or 'by way of example' which does not connote exclusivity."*[20] But it went on to hold that a general power could not be used to undermine express or implied limitations on a specific power.

(9) You can make clear that a list of examples is not intended to be exhaustive by using other expressions such as "including", "for example" and "among other things". However, like "in particular", these formulations will not necessarily enable a general power to be used to get around limitations on a specific power. If you want to allow a general power to be used in that way, you may need to address the point explicitly.

(10) The relationship between two propositions may be particularly hard to follow if an expression like "subject to," "despite" or "without prejudice to" appears at the beginning of a sentence. It is generally better to state the two propositions and then explain how they relate to one another. For example, instead of beginning a specific provision with a statement that it is "without prejudice to the generality of" an earlier general provision, you could set out the specific provision and then state that it does not limit the general one, or introduce the specific provision with words like "for example".

20 *R (JM (Zimbabwe)) v Secretary of State for the Home Department* [2018] 1 WLR 2329, per Flaux LJ, para 71.

(11) Global cross-references such as “subject to the other provisions of this Act” may occasionally be unavoidable, but they can be hard to understand and apply. If the reference cannot be avoided, try to indicate where the relevant provision is made.

(12) Try to avoid using “notwithstanding” in English, as it is rather formal and archaic. It can generally be replaced with “despite” (and where that is the case, the Welsh language text will say *“er gwaethaf”* whichever term is used), or with a phrase like “even though” or “even if”.

5.7 Parenthetical descriptions of provisions

(1) When referring to another provision, it is common to include a brief description of the provision in brackets, to help the reader understand the significance of the reference. It is often helpful to include a description when the reference is to a provision in another piece of legislation, and can sometimes be helpful when the provision is in the same Act or instrument. But consider whether your text already makes clear the effect of the provision referred to, and whether the usefulness of any descriptive words outweighs the disadvantage of interrupting the flow of text.

(2) See paragraph 7.10 for further guidance on the use of parenthetical descriptions in amending provisions.

(3) If you include a parenthetical description, make sure that it does describe the provision you are referring to. The description will often be the heading of the section, regulation or Schedule, but the aim is to give a description rather than a quotation. The heading may have been devised in the context of other headings in the Act or instrument in question, and may not be very helpful taken in isolation. It may be better to describe the provision in a different way.

(4) In addition, the heading of a section, regulation or Schedule may not be a helpful description of a subdivision within it. You may need to describe the particular subsection or paragraph that you are referring to. For example, if section 1 of an Act is headed “cases to which Part 1 applies” and sets out those cases, but subsection (3) sets out exceptions, it would be misleading to refer to “section 1(3) (cases to which Part 1 applies)”. It might be better to refer to “section 1(3) (exceptions)”.

(5) To ensure that you describe the relevant provisions helpfully and accurately, it may sometimes be appropriate to include descriptions of provisions at different levels. In the example given above, it might be helpful for a reference to section 1(3) to use a formulation like “In section 1 (cases to which Part 1 applies), in subsection (3) (exceptions)…”.

Chapter 6: Statutory references and citations

Introduction

6.1 Overview of Chapter

(1) This Chapter gives guidance on how to cite the various types of domestic and EU legislation and how to describe the divisions and subdivisions within them. It sets out technical rules which should be followed in the interests of consistency.

(2) Beware that different terminology is used to describe provisions and groups of provisions depending on the type of legislation and the location of the provisions. For example, a provision numbered "(1)" or "(2)" is a subsection if it appears in the body of an Act, a paragraph in the body of a statutory instrument, a sub-paragraph in a Schedule to an Act or statutory instrument, and a point in a piece of EU legislation.

(3) This Chapter should be read with Chapter 5, which gives general guidance on the use of cross-references to other statutory provisions. See also Chapter 7 for guidance on drafting provisions which amend other legislation (including additional guidance on describing the provisions that are being amended).

6.2 References to UK and EU legislation in the Welsh language text

(1) Acts of the UK Parliament, Orders in Council and subordinate legislation made by Ministers of the Crown are enacted only in English[21]. Legislative instruments made by the EU institutions are published in the official languages of the EU, which include English but not Welsh, and direct EU legislation (including regulations and decisions) is brought into domestic law from exit day only in the form of the English language version.[22]

(2) Where the Welsh language text of an Assembly Bill or Welsh statutory instrument refers to legislation that does not exist in Welsh, the established practice is to refer to the legislation using a Welsh language "courtesy translation" of its title rather than its original title in English.

(3) When referring to divisions of UK and EU legislation, the Welsh language text of a Bill or instrument should use the appropriate Welsh terminology. For example, a Part of an Act of Parliament should be called *"Rhan"*, and an Article of an EU directive should be called *"Erthygl"*, even though the original legislation does not use those terms.

References to domestic legislation in Assembly Bills

6.3 How to refer to Acts and Measures in general

(1) The National Assembly for Wales and the UK Parliament both pass legislation called Acts. If a provision refers generally to Acts of the National Assembly for Wales or Acts of the UK Parliament, it should make clear whether it means Acts passed by the Assembly or by the UK Parliament, or both.

(2) The Senedd and Elections (Wales) Bill was introduced in the National Assembly for Wales on 12 February 2019. If passed, the Bill will rename both the Assembly and its Acts. References to the institution and its legislation will then need to reflect the new names.

(3) For Acts of the UK Parliament, refer to "an Act of Parliament" or "an Act of the Parliament of the United Kingdom".

21 There have been occasional exceptions. The National Assembly for Wales (Disqualification) Order 2015 was an Order in Council which required the approval of the National Assembly for Wales and was made bilingually.

22 This does not affect the use of other language versions for the purpose of interpreting direct EU legislation which is retained: see section 3(4) of the European Union (Withdrawal) Act 2018.

(4) The National Assembly for Wales passed legislation known as Measures during the third Assembly term (2007-2011). Schedule 1 to the Legislation (Wales) Act 2019 contains a general definition of "Assembly Measure" and that term should be used when referring generally to Measures.

(5) "Act" and "Measure" always begin with capital letters, whether the reference is to a specific Act or Measure, or to Acts or Measures in general.

6.4 How to cite a specific Act or Measure in a Bill

(1) Where a Bill refers by name to a specific Act of the UK Parliament (whether a public general Act or local Act), the full reference should consist of the short title of the Act, followed by its chapter number in brackets. For example:

Government of Wales Act 2006 (c. 32)
University of Wales, Cardiff Act 2004 (c. vi)

(2) When referring to older Acts of Parliament, two further points should be noted:

(a) In Acts passed before the end of the 1961-62 session of Parliament, the title included a comma between the word "Act" and the year (e.g. "Pipe-lines Act, 1962"). The comma should be omitted from a reference to the Act.

(b) Until the end of 1962, it was possible for two Acts passed in the same year to have the same chapter number, because there was a new series of chapter numbers for each Parliamentary session. Acts were cited by giving the regnal years of the session followed by the chapter number. When referring to an Act passed before the end of 1962, the regnal year should be included before the chapter number if (but **only** if) another Act was passed in the same calendar year with the same chapter number. For example:

Fisheries Act 1955 (3 & 4 Eliz. 2 c. 7)
Wireless Telegraphy (Blind Persons) Act 1955 (4 & 5 Eliz. 2 c. 7)

(3) Where a Bill refers to a specific Assembly Act or Measure, the full reference should consist of the short title of the Act or Measure, followed by its "anaw" or "nawm" number in brackets. For example:

Renting Homes (Wales) Act 2016 (anaw 1)
Welsh Language (Wales) Measure 2011 (nawm 1)

(4) All of this information can be found at the start of the published Act or Measure.

6.5 How to refer to subordinate legislation: general points

(1) The most common forms of subordinate legislation made by statutory instrument are regulations, rules and orders. In references to regulations, rules or orders in general, those words do not begin with capital letters. For example, a section of an Act might refer generically to "regulations under this section".

(2) "Regulations" and "Rules" begin with capital letters when referring to a specific set of regulations or rules, and "Order" begins with a capital letter when referring to a specific order. For example, a provision in a set of regulations would refer to them as "these Regulations".

(3) "Order in Council" always has capital letters, even in a reference to Orders in Council generally.

6.6 How to cite a specific statutory instrument in a Bill

(1) Where a Bill refers to a specific statutory instrument made by a Minister of the Crown or Her Majesty in Council, the full reference should consist of the title of the instrument, followed by the S.I. number in brackets. For example:

Building Regulations 2010 (S.I. 2010/2214)

(2) The full reference to a statutory instrument made by the Welsh Ministers or by the old National Assembly for Wales should consist of the title of the instrument, followed by the S.I. number in the UK series in brackets, with the subsidiary number in the Wales series inside another set of brackets. For example:

Private Dentistry (Wales) Regulations 2017 (S.I. 2017/202 (W. 57))

(3) Similarly, the full reference to a commencement order or commencement regulations should include the subsidiary number in the commencement series, and the full reference to a statutory instrument about court fees or procedures should include the subsidiary number in the legal series. For example:

Environment (Wales) Act 2016 (Commencement No. 1) Order 2017 (S.I. 2017/152 (W. 44) (C. 16))

Civil Proceedings Fees Order 2008 (S.I. 2008/1053 (L. 5))

(4) The title and reference numbers appear at the start of the published instrument.

6.7 Where to give full citations in a Bill

(1) The first time a Bill refers to a specific Act, Measure or instrument, it should give the full citation consisting of the title followed by the reference number in brackets. For later references to the same piece of legislation, consider whether it would be helpful to include the reference number after the title. In general, the number should be included in the first reference to the legislation in a section or Schedule, but is not needed in later references in the same section or Schedule.

(2) Where a Bill contains a Schedule of amendments arranged under italic headings giving the name of each piece of legislation that it amends, the reference numbers should be given in those headings (whether or not they have been given elsewhere in the Bill) but not in the paragraphs of the Schedule. In all other cases, the reference number should appear in the text of the provision containing the reference.

6.8 References to enactments include past and future amendments

(1) Where an Assembly Act or Welsh subordinate instrument refers to another enactment, section 25 of the Legislation (Wales) Act 2019 means that the reference is to that enactment as amended, extended or applied by any other enactment. Section 25 applies whether the amending enactment is made before or after the Act or instrument containing the reference[23], and it has effect unless express provision is made to the contrary or the context requires otherwise[24].

(2) Section 25 means that there is usually no need for a Bill or instrument which refers to another enactment to mention that the enactment has been amended or might be amended in future. The reference should not mention past or future amendments unless something in the context suggests that they are not included. If there is a need to say something, include words such as "as amended [from time to time]".

(3) If it is important to ensure that you are referring to an enactment only as it has effect at the time when your Bill or instrument is enacted, you may need to include express provision to that effect in order to exclude the operation of section 25 in relation to future amendments.

23 When inserting a cross-reference to another enactment into legislation to which Part 2 of the 2019 Act does not apply (including any legislation enacted before 2020, and any Act of the UK Parliament), bear in mind that section 20(2) of the Interpretation Act 1978 will not necessarily have the same effect.

24 Once the original enactment is amended, the context of the reference to that enactment will include the legislation that amends it as well as the legislation that refers to it.

(4) Similarly, if you are referring to legislation which has already been amended, but you want to refer to it as it had effect before the amendments, you may need express wording to ensure that section 25 is excluded. For example, it may be appropriate to refer to a section "as originally enacted".

6.9 Referring to a Bill in another Bill

(1) It is sometimes necessary for an Assembly Bill to refer to another Bill that is being considered by the National Assembly for Wales or by the UK Parliament.

(2) There should be no objection to referring to an Assembly Bill which has passed Stage 1, or to a Parliamentary Bill which has had its Second Reading in both Houses. The Assembly cannot be accused of taking the relevant legislature for granted, because that legislature has already agreed the general principles of the Bill.

(3) There may also be occasions when it is appropriate to refer to a Bill which is at an earlier stage, for example if that Bill is uncontroversial, or if including references to it will make it significantly easier for Assembly Members to understand the intended effect of the Assembly Bill which contains the references.

(4) Where an Assembly Bill refers to another Bill, there is a risk that the Bill referred to might change before enactment or might not be enacted at all. The Assembly Bill that refers to it might then need to be amended.

(5) An Assembly Bill should refer to another Bill as if it were already an Act, using the title given by its short title provision. The other Bill will not yet have an anaw number or chapter number, so the number "00" should be given. The actual number should be inserted as a printing change once the other Bill is passed.

Form of citations in statutory instruments

6.10 How and where to give full citations

(1) Where a provision in the body or preamble of a statutory instrument refers to an Act, Measure or other statutory instrument, the title of the other legislation appears in the text of the provision, and the numerical citation is given in a footnote.

(2) In general, it is only necessary to include a footnote to give the citation the first time that the Act, Measure or instrument is mentioned. However, it may be appropriate to include a footnote for a later reference to the same legislation if there is other information that it would be helpful to give in relation to that reference (for example, because it refers to another provision that has been amended differently). In that case, the later footnote usually begins by repeating the numerical citation.

(3) For Acts and Measures, the footnote should begin with the year followed by the chapter, anaw or nawm number, which should not be in brackets. For example:

2018 c. 12

2018 anaw 2

(4) If an Act or Measure is mentioned anywhere else in a footnote, the citation should be given in the form used in Assembly Bills, consisting of the short title with the reference number included in brackets.

(5) Where a provision of one statutory instrument refers to another statutory instrument, the footnote to the reference should begin with the S.I. number of the instrument that is referred to (including any subsidiary number in brackets).

(6) If any other statutory instrument is mentioned in a footnote, it is normally cited by S.I. number only, without including the title. However, footnotes to preambles often give the titles of Transfer of Functions Orders in full the first time they mention them.

(7) Where a statutory instrument has a Schedule of amendments arranged under headings giving the titles of the legislation amended, the reference numbers may be given either in the headings in brackets (following the style of Bills), or in footnotes to the references to the legislation in the paragraphs of the Schedule.

6.11 Explaining previous amendments

(1) Where a statutory instrument refers to legislation that has been amended, the footnote to the reference should identify amendments that are relevant to the instrument (including transfers of functions). This is an example of a reference to an Act with a footnote explaining a relevant amendment:

> … section 14A of the Social Services and Well-being (Wales) Act 2014[(1)]…
>
> (1) 2014 anaw 4. Section 14A was inserted by the Well-being of Future Generations (Wales) Act 2015 (anaw 2), Schedule 4, paragraph 34.

(2) If an instrument refers to a piece of legislation that has been amended, but some or all of the amendments are not relevant to the instrument, the footnote should indicate that this is the case. The usual forms of words are as follows.

(a) If none of the amending enactments is relevant:

> S.I. 1996/1502, to which there are amendments not relevant to these Regulations.

(b) If there is at least one amending enactment that is relevant and at least two that are not:

> S.I. 1997/2182, amended by S.I. 2016/639 (W. 175); there are other amending instruments but none is relevant to these Regulations.

(c) If there are at least two amending enactments that are relevant and at least one that is not:

> S.I. 1997/818; relevant amending instruments are S.I. 2001/3323 (W. 276), 2003/955 (W. 129).

Divisions of domestic legislation

6.12 Introduction

(1) In domestic legislation, the name given to a provision numbered in a particular way can vary according to whether the provision appears in primary or secondary legislation, and whether it appears in the body of the legislation or in a Schedule. The table summarises the conventions governing the naming and numbering of provisions, which are described in more detail in the paragraphs that follow.

Provision Number	Act or Measure	Statutory Instrument (regulations, order, rules)		Schedule to Act, Measure or Statutory Instrument	
1, 2, 3	section	regulation, article or rule		paragraph	
(1), (2), (3)	subsection	paragraph	↓	sub-paragraph	↓
(a), (b), (c)	paragraph	sub-paragraph	paragraph	paragraph	sub-paragraph
(i), (ii), (iii)	sub-paragraph	paragraph	sub-paragraph	sub-paragraph	paragraph

(2) Note that provisions numbered in all of these ways may be called paragraphs, depending on where they appear. But a division of a paragraph is always a sub-paragraph, and a division of a sub-paragraph is always a paragraph.

6.13 Referring to provisions of Acts and Measures

(1) In Acts of Parliament and Assembly Acts and Measures, the basic hierarchy of provisions is as follows (going from highest to lowest):

- section
- subsection
- paragraph
- sub-paragraph

(2) Acts and Measures are divided into sections numbered 1, 2, 3 etc. Refer to a "section of" the Act or Measure and note that "section" does not begin with a capital letter. (Before 2001, section numbers in Acts of the UK Parliament were followed by full stops, but full stops should not be included after the numbers in references to sections.)

(3) A section containing more than one sentence is normally divided into subsections numbered (1), (2), (3) etc. Note that the number appears in brackets, and that in English "subsection" does not contain a hyphen whereas in Welsh *"is-adran"* does.

(4) A subsection may contain paragraphs numbered (a), (b), (c) etc.

(5) Paragraphs may contain sub-paragraphs numbered (i), (ii), (iii) etc. Note that "sub-paragraph" in English and *"is-baragraff"* in Welsh both have hyphens.

(6) A section which contains a single sentence will not be divided into subsections, but may still contain paragraphs numbered (a), (b), (c) etc. which may contain sub-paragraphs numbered (i), (ii), (iii) etc. (as with a subsection).

(7) A section or subsection may also contain an unnumbered list of definitions. Refer to such a definition as "the definition of x". An unnumbered definition may contain paragraphs (a), (b), (c) etc. which may contain sub-paragraphs (i), (ii), (iii) etc.

6.14 Referring to Schedules

(1) Refer to a "Schedule to", not "of", an Act or Measure. Note that "Schedule" always begin with capital letters.

(2) Schedules are numbered 1, 2, 3 etc. But if there is only one Schedule, it ishould be headed "Schedule" and referred to as "the Schedule".[25]

(3) In a Schedule containing free-standing provisions, the basic hierarchy is as follows:

- paragraph
- sub-paragraph
- paragraph
- sub-paragraph

(4) A Schedule of free-standing provisions is generally divided into paragraphs numbered 1, 2, 3 etc. but may instead have a single unnumbered paragraph.

(5) If a paragraph contains more than one sentence, it will normally be divided into sub-paragraphs numbered (1), (2), (3) etc.

25 Occasionally a lone schedule has been numbered as Schedule 1. That approach should not be followed in a new Bill or instrument, but if you are referring to a Schedule that has been numbered in this way, refer to it as "Schedule 1" (*"Atodlen 1"*).

(6) Sub-paragraphs may be divided into paragraphs numbered (a), (b), (c) etc. (Note that they are called paragraphs, not sub-sub-paragraphs.) Those paragraphs may in turn be divided into sub-paragraphs numbered (i), (ii), (iii) etc.

(7) If a paragraph of a Schedule contains only a single sentence, it is not divided into sub-paragraphs numbered (1), (2), (3) etc. But it may instead contain sub-paragraphs (a), (b), (c) etc. which may themselves contain paragraphs (i), (ii), (iii) etc.

(8) A Schedule paragraph, or a sub-paragraph numbered (1), (2), (3) etc., may contain an unnumbered list of definitions. Refer to "the definition of x". An unnumbered definition may contain paragraphs (a), (b), (c) etc. which may contain sub-paragraphs (i), (ii), (iii) etc.

6.15 Referring to provisions of subordinate legislation

(1) In statutory instruments, the basic hierarchy of provisions is as follows:

- regulation, rule or article
- paragraph
- sub-paragraph
- paragraph

(2) The main divisions of the different types of instrument are as follows:

- A set of regulations is divided into a number of individual regulations. Refer to a numbered "regulation of" the regulations in question. For example:

  > See regulation 4 of the Non-Domestic Rating (Miscellaneous Provisions) (Wales) Regulations 2017.

- A set of rules is divided into a number of individual rules. Refer to a specific "rule of" the rules.
- An order or Order in Council is divided into a number of articles. Refer to a specific "article of" the order. Note that "article" does not begin with a capital letter.[26]

(3) Regulations, rules and articles are numbered 1, 2, 3 etc. (Do not include a full stop after the number, even though there will be one after the number in the original instrument.)

(4) If a regulation, rule or article contains more than one sentence, it will normally be divided into paragraphs numbered (1), (2), (3) etc.

(5) Paragraphs may be divided into sub-paragraphs numbered (a), (b), (c) etc.

(6) Sub-paragraphs may be divided into paragraphs numbered (i), (ii), (iii) etc. (These subdivisions are called paragraphs, not sub-sub-paragraphs.)

(7) If a regulation, rule or article contains only a single sentence, it is not divided into paragraphs numbered (1), (2), (3) etc. But it may contain paragraphs (a), (b), (c) etc. which may themselves contain sub-paragraphs (i), (ii), (iii) etc.

(8) A regulation, rule or article, or a paragraph numbered (1), (2) etc., may also contain an unnumbered list of definitions. Lists of this kind work in the same way in statutory instruments as they do in Acts.

(9) Schedules work in the same way in statutory instruments as they do in Acts.

26 A different rule applies to Northern Ireland and EU legislation. In references to Northern Ireland orders or Orders in Council, "Article" should always begin with a capital letter. The same is true for Articles of EU instruments: see paragraph 6.26 below.

6.16 References to specific subdivisions within provisions

(1) A reference to a specific subdivision of a provision is usually given in the following "composite" form that includes the numbers of all the relevant levels of provision:

section 3(1)(a)

regulation 2(2)(b)

(2) When you identify a subdivision of legislation using this kind of composite reference, always use the term for the highest level of provision whose number is included in the reference. For example, refer to "section 3(1)(a)" because section 3 is the highest level, and not to "paragraph 3(1)(a)" even though you are identifying a specific paragraph in one subsection of the section.

(3) If a number of references to elements of the same provision appear close together, it may be better to avoid "composite" references that would involve repeating the provision number. For example, if you have already mentioned section 3 and then need to refer to section 3(1)(a), you might prefer to say "subsection (1)(a) of that section".

6.17 Referring to provisions grouped into Parts and Chapters

(1) The provisions in the body of an Act or statutory instrument may be grouped into two or more Parts dealing with different topics. The paragraphs of a Schedule to an Act or instrument may also be arranged in Parts. Refer to a "Part of" the Act, instrument or Schedule. "Part" always begins with a capital letter.

(2) A Part of an Act or instrument may be divided into two or more Chapters, and very occasionally a Part of a Schedule is divided into Chapters. Refer to a "Chapter of" the Part. "Chapter" always begins with a capital letter.

(3) A reference to a Part of an Act or instrument, or to a Chapter of one of its Parts, will generally be understood to include any Schedules introduced by sections, regulations or articles within the Part or Chapter.

(4) When referring to a specific paragraph of a Schedule which is divided into Parts, it is not usually necessary to identify the Part in which the paragraph appears. However, in some Schedules to old Acts the paragraph numbering starts afresh in each Part, so you will need to mention the Part to make clear which paragraph you mean.

6.18 Numbering of Parts and Chapters in older legislation

(1) Before 2001, Roman numerals were used for numbering Parts and Chapters in Acts of Parliament and their Schedules. Arabic numerals were used from 2001 onwards. Some drafters of statutory instruments continued to use Roman numerals after that, but Arabic numerals are now used for Parts and Chapters in all domestic legislation.

(2) Arabic numerals should be used in all references to Parts and Chapters of existing legislation, even if the original legislation used Roman numerals. For example, if the third Part of an Act is headed "Part III", it should be referred to as "Part 3".

(3) Arabic numerals should also be used when inserting or substituting Parts or Chapters, even if the existing Parts or Chapters have Roman numerals: see paragraph 7.19.

(4) But if it is necessary to quote text which contains Roman numerals (e.g. for the purposes of amending it), the text should be quoted as it is.

References to EU legislation

6.19 Introduction

(1) The principal types of legislative instrument made by the EU institutions under the Treaties are regulations, directives and decisions. The guidance that follows is about how Bills and statutory instruments should refer to instruments of these types, which tend to follow a standard format.

(2) It may occasionally be necessary to refer to other non-binding EU instruments such as recommendations, opinions, resolutions and declarations. The format of those instruments varies, and may not follow the conventions that apply to binding EU legislation, so it is harder to give guidance about referring to those instruments.

(3) The guidance which follows reflects the position under the European Union (Withdrawal) Act 2018, which repeals the European Communities Act 1972 "on exit day" but provides for EU law to continue to form part of the law of the United Kingdom. In particular, section 3 of the 2018 Act provides that "direct EU legislation" (which includes most EU regulations and decisions) is retained in domestic law "on and after exit day". At the time of writing, section 20(1) of the Act defines "exit day" as 11.00 pm on 31 October 2019.

(4) EU directives are not retained in UK law on and after exit day. However, section 2 of the 2018 Act preserves the effect of subordinate legislation made under the European Communities Act 1972 and other domestic legislation implementing EU law, and section 4 provides that other EU law rights and obligations continue to be recognised in domestic law.

(5) The 2018 Act does not make provision for the implementation of a withdrawal agreement between the UK and the EU.[27] A further Act of the UK Parliament would be required to give effect to any agreement that was reached, and that Act would be likely to modify or suspend the operation of the 2018 Act during any transition period provided for in the agreement. The 2018 Act therefore sets out the position that would apply if the UK were to leave the EU without a withdrawal agreement.

6.20 References to retained direct EU legislation following EU exit

(1) Where an EU legislative instrument continues to have effect in the United Kingdom as "retained direct EU legislation", there will be two versions of that instrument as from exit day: the version that forms part of domestic law and may be amended by other domestic legislation; and the version that continues to form part of the law of the European Union and no longer applies to the United Kingdom.

(2) Where an Assembly Act or Welsh subordinate instrument refers to direct EU legislation which has been retained in UK law, section 24 of the Legislation (Wales) Act 2019 provides that the reference is to that legislation as it forms part of UK law (and not as it forms part of EU law)[28]. Assembly Bills and subordinate legislation should therefore refer to this legislation in the same way after EU exit as before. There is no need to say that the reference is to the legislation as retained in domestic law by the European Union (Withdrawal) Act 2018, unless the context suggests otherwise.

(3) However, if a Bill or instrument refers to any direct EU legislation that existed before exit day, and intends to refer to it in the form in which it continues to apply to the European Union after exit day, the reference will need to include wording to make that clear. For example, it might refer to a regulation "as it has effect in EU law".

27 Section 13 of the 2018 Act does make detailed provision about the Parliamentary process that must be followed before a withdrawal agreement may be ratified.

28 The same is true for references in legislation to which the Interpretation Act 1978 applies, by virtue of section 20(3) to (5) of that Act. Those subsections come into force on exit day.

(4) "Retained direct EU legislation" also includes Protocol 1 to the EEA Agreement and the Annexes to that Agreement, so far as they apply and adapt other direct EU legislation in relation to the EEA. Section 24 of the Legislation (Wales) Act 2019 means that references to the provisions of the Protocol and Annexes that are retained in domestic law will be references to them as they form part of domestic law.

(5) Schedule 1 to the 2019 Act also provides a general definition of "EEA agreement" which includes any future changes or additions to the agreement, but which excludes retained direct EU legislation from exit day. So if a Bill or instrument contains a reference to the EEA Agreement to which section 24 does not apply, the reference will be to the agreement as it continues to apply to the EEA[29].

(6) Schedule 1 to the Legislation (Wales) Act 2019 defines "EU instrument" as excluding any retained direct EU legislation from exit day, so a general reference to EU instruments will be a reference to those instruments that apply to the EU[30].

6.21 How to refer to regulations, directives and decisions

(1) If you are referring to EU regulations, directives or decisions in general, those words should not begin with capital letters. But Regulation, Directive or Decision should always begin with a capital letter when referring to a specific instrument.

(2) When an Assembly Bill or Welsh statutory instrument refers to a specific piece of EU legislation for the first time, it should give the full title of the instrument. The full title consists of the following elements:

- the type of instrument (e.g. regulation or directive)
- the EU institution which made the instrument (e.g. Council or Commission)
- the reference number of the instrument (see below)
- the date on which it was adopted
- a description of the subject matter of the instrument (which may include a statement that it repeals or amends other instruments)

(3) All of this information should appear at the start of the instrument as published in the Official Journal of the European Union or on legislation.gov.uk.

(4) Once the full title of an EU legislative instrument has been given, subsequent references to the same instrument may omit the date and subject matter.

(5) Since the start of 2015, the EU has applied a standardised numbering system to all of its legislative instruments and has given each instrument a unique reference number. The reference number for an instrument published on or after 1 January 2015 is in the format:

(domain) year/number

The "domain" consists of one of the abbreviations (EU), (Euratom), (EU, Euratom) or (CFSP), and the year is always written as four digits (e.g. 2017).

(6) These are examples of the full titles of instruments made since the start of 2015:

> Regulation (EU) 2017/1130 of the European Parliament and of the Council of 14 June 2017 defining characteristics for fishing vessels
>
> Commission Directive (EU) 2015/996 of 19 May 2015 establishing common noise assessment methods according to Directive 2002/49/EC of the European Parliament and of the Council

29 The definition of "EEA Agreement" in the 2019 Act has the same effect as the definition in the Interpretation Act 1978, which will apply to references inserted into legislation to which Part 2 of the 2019 Act does not apply.

30 The definition of "EU instrument" in the 2019 Act has the same effect as the definition in the Interpretation Act 1978, which will apply to references inserted into legislation to which Part 2 of the 2019 Act does not apply.

(7) Several different practices were adopted for numbering instruments before 2015. The main points to note about the position before 2015 are as follows:

(a) There was a separate numbering series for each type of instrument.

(b) The reference number for a regulation was set out in a different order and format (e.g. "Regulation (EC) No 44/2001") from the reference number for a directive or decision (e.g. "Directive 2008/98/EC").

(c) The reference number given in brackets after the title of a decision was not formally part of the title. (Nevertheless, a reference to the title of a decision made before 2015 should include the reference number.)

(d) Before 2000 the year was written as two digits rather than four.

(8) These are examples of the full titles of instruments made before 2015:

> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
>
> Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption

(9) In the Welsh language text of a Bill or statutory instrument, all of the title of an EU legislative instrument is translated, except the "domain" (such as EU or EC) in the reference number.

6.22 Referring to EU legislation as amended

(1) Section 25 of the Legislation (Wales) Act 2019 provides that a reference to an enactment in an Assembly Act or Welsh subordinate instrument is a reference to it as amended at any time, whether before or after the Act or instrument became law (see paragraph 6.8). The definition of "enactment" in Schedule 1 to the 2019 Act includes retained direct EU legislation, so a reference to a piece of EU legislation which is retained in domestic law on exit day is a reference to that legislation as amended by any other domestic legislation at any time.

(2) Therefore, if you intend to refer to the retained version of a piece of direct EU legislation (such as a regulation or decision), and to refer to it as amended from time to time, you do not need to say which version you are referring to unless something in the context suggests a different intention. If it does, you could include words such as "as amended from time to time".

(3) As with references to ordinary domestic legislation, statutory instruments which refer to retained direct EU legislation should include footnotes mentioning relevant amendments made by other Acts and statutory instruments.

(4) Section 26 of the 2019 Act provides that a reference in an Assembly Act or Welsh subordinate instrument to an EU instrument is a reference to the instrument as amended by any other EU instrument before the day on which the Act receives Royal Assent or the instrument is made[31]. Schedule 1 to the 2019 Act provides that an "EU instrument" means any instrument issued by an EU institution, but does not include anything that becomes retained direct EU legislation.

(5) Therefore, if an Act or statutory instrument refers to a piece of direct EU legislation as it continues to have effect in the European Union, or to a different type of EU legislation such as a directive, the presumption will be that the reference includes amendments made by other EU legislation before the Act or instrument was enacted. If the reference is also intended to include amendments made by later EU legislation (which seems unlikely after exit day), that will need to be made clear.

(6) If a reference to any retained direct EU legislation or EU instrument is intended to exclude amendments which it would otherwise include, wording should be added to make that clear. For example, if you want to exclude any amendments made on or after exit day, you could refer to the legislation "as it had effect immediately before exit day".

31 Section 26 of the 2019 Act has the same effect as section 20A of the Interpretation Act 1978, which will apply to references to EU instruments that are inserted into legislation to which Part 1 of the 2019 Act does not apply.

6.23 Citing the Official Journal in a statutory instrument

(1) In a statutory instrument, a reference to an EU regulation or decision should not be accompanied by a footnote referring to the Official Journal of the European Union if the reference is to the instrument as it forms part of UK law. You should include a footnote citing the Official Journal in which the instrument was published only if you are referring to an instrument as it applies in the European Union.

(2) As directives are not retained in domestic law, any reference to a directive must refer to the directive as it applies or applied in the European Union. A reference to the full title of a directive should therefore be accompanied by a footnote referring to the Official Journal in which it was published.

(3) The citation should be given in a footnote to the first reference to the instrument. It must include the series and number of the Official Journal (legislation is published in the "L" series), the date of publication and the page number, in the following format:

OJ No L 119, 4.5.2016, p. 1

(4) If the statutory instrument refers to an EU instrument which has been amended, the footnote giving the Official Journal citation should also mention the amendments that are relevant (as with amendments to domestic legislation).

Divisions of a regulation, directive or decision

6.24 Structure of instruments: general

(1) The title of an EU legislative instrument is followed by a preamble which sets out the legal background to the instrument and recites the reasons for adopting it.

(2) The preamble is followed by the operative provisions of the instrument. The basic hierarchy of provisions in a regulation, directive or decision is as follows:

- Article
- paragraph
- subparagraph
- point
- indent

6.25 Recitals

(1) It is occasionally necessary to refer to a recital. Recitals are introduced by the word "Whereas:" and if there is more than one they are normally numbered (1), (2) etc. (This has been required for most instruments since February 2000.)

(2) If the recitals are numbered, the reference should be to "recital 1", "recital 2" netc. (without brackets around the numbers). If they are unnumbered, refer to "the first recital", "the second recital" etc. Refer to recitals "of", not "to", the instrument.

6.26 Articles and paragraphs

(1) The operative provisions of a regulation, directive or decision will consist of one or more Articles. If there is only one Article, it is referred to as the "Sole Article". If there are two or more, they are numbered 1, 2, 3 etc. Refer to "Article 1", "Article 2" etc. of the instrument. Note that "Article" always begins with a capital letter (unlike articles of domestic orders).

(2) An Article may contain more than one sentence, in which case it may (but will not always) be divided into a number of paragraphs. Note that "paragraph" does not begin with a capital letter.

(3) The paragraphs of an Article may be numbered. Refer to them as paragraph 1, 2, 3 etc. Do not put a full stop after the paragraph number, even though there is one in the instrument. If the Article number is also given, refer to Article 1(1), 1(2), 1(3) etc. In this kind of "composite" reference, put the paragraph number in brackets even though there are none in the instrument itself.

(4) Alternatively, paragraphs may be unnumbered. Refer to unnumbered paragraphs of an Article as the first paragraph", "the second paragraph" etc.

(5) A numbered paragraph of an Article may contain more than one sentence, in which case it may (but will not always) be divided into two or more unnumbered subparagraphs. Refer to "the first subparagraph", "the second subparagraph" etc. Note that "subparagraph" does not have a hyphen in English (unlike sub-paragraphs in domestic legislation) but *"is-baragraff"* does have a hyphen in Welsh. They do not begin with capital letters.

(6) If an Article, paragraph or subparagraph contains more than two sentences in a single block of text, refer to them as the first sentence, second sentence etc.

6.27 Points and indents

(1) Articles, paragraphs and subparagraphs may contain points. These are not normally complete sentences, and are generally preceded by introductory words.

(2) Points are numbered, and there may be more than one level of points within a provision. The highest level may be numbered either (1), (2), (3) etc. or (a), (b), (c) etc. Points numbered (1), (2), (3) etc. may contain points numbered (a), (b), (c) etc. If points numbered (a), (b), (c) etc. contain further points, they are numbered (i), (ii), (iii) etc.

(3) A point may be identified using a "composite" form of reference. For example, point (a) of paragraph 1 of Article 4 of an instrument may be referred to as "Article 4(1)(a)" or "paragraph 1(a)".

(4) When referring to lower levels of points, try to avoid repeating the word "point". For example, a reference should normally say "in point (1)(c)(ii)" rather than "in point (1), in point (c), in point (ii)".

(5) Definitions may appear anywhere in an instrument, but a "definitions" Article normally sets out definitions as a list of numbered points. In a definition, the defined term appears in single quotation marks (whereas double quotation marks are used in domestic legislation).

(6) Articles, paragraphs, subparagraphs and points may also contain indents. Like points, indents are not normally complete sentences, and are generally preceded by introductory words.

(7) Indents do not have numbers, but are identified by a long dash "—". Refer to them as the first indent, second indent etc.

6.28 Groupings of provisions

(1) The Articles of an EU instrument may be arranged in a number of groupings. The usual hierarchy of groupings is:

- Title
- Chapter
- Section

(2) Articles are most commonly grouped into Chapters. Refer to a particular "Chapter of" the instrument (always begining with a capital letter).

(3) A Chapter may in turn be divided into Sections, and occasionally the Articles of an instrument are grouped into Sections without any Chapters. Refer to a "Section of" the instrument or Chapter (always beginning with a capital letter).

(4) In larger instruments, Chapters may be grouped into Titles. An instrument may contain Titles some of which are divided into Chapters and some of which are not. Refer to a numbered "Title of" the instrument (always beginning with a capital letter).

(5) Chapters, Sections and Titles may be numbered using Roman or Arabic numerals. (Arabic numerals are usual for Sections and Roman numerals are usual for Titles.) Whatever style of numbering the original instrument uses, you should always use Arabic numerals when referring to the number of a Chapter, Section or Title, or when inserting a new Chapter, Section or Title into an instrument which becomes part of domestic law on exit day.

6.29 Annexes

(1) An instrument may have one or more Annexes. Refer to an "Annex to" the regulation, directive or decision (not an "Annex of" the instrument). "Annex" always begins with a capital letter.

(2) Where there is more than one Annex, they are usually numbered I, II, III etc. but some instruments have Annexes numbered A, B, C etc. If the Annexes to an instrument are numbered using Roman numerals, references to them should nevertheless use Arabic numerals (as should provisions which insert new Annexes into an instrument which becomes part of domestic law on exit day).

(3) Like a Schedule to a piece of domestic legislation, an Annex to an EU instrument may consist of a list or table that continues a proposition set out in an Article of the instrument, or it may set out complete legislative propositions. An Annex may also contain provisions grouped into Sections or Parts.

(4) There are no fixed style requirements for material in Annexes: any system of numbering or subdivision that is appropriate to the contents of the Annex may be used. Where an Annex contains numbered provisions, the divisions of the Annex are often referred to as "points", but the numbering will not necessarily follow the same conventions as the numbering in the body of the instrument.

Chapter 7: Repeals and amendments

Introduction

7.1 Overview of Chapter

(1) This Chapter is about provisions of Bills and statutory instruments that make changes to other legislation. It includes guidance on:

(a) describing the location and effect of a textual amendment, numbering new provisions that are inserted into an existing series, and other points of style;

(b) deciding which text to amend (including amending headings and conjunctions);

(c) amending provisions that are not yet in force or that are subject to amendments or repeals that are not yet in force;

(d) drafting non-textual modifications of legislation.

(2) This Chapter applies to amendments to domestic legislation (Acts, regulations, orders etc.) and amendments to retained direct EU legislation (regulations, decisions and other EU legislation that form part of domestic law from exit day by virtue of section 3 of the European Union (Withdrawal) Act 2018).

(3) This Chapter uses the following terminology for different types of amendment:

(a) "insertion" means adding new material to an existing piece of legislation without removing existing material;

(b) "substitution" means removing existing material from legislation and replacing it with new material;

(c) "repeal" means removing material from an Act or Measure so that it no longer forms part of the law of England and Wales;

(d) "revocation" means removing material from subordinate legislation or retained direct EU legislation so that it no longer forms part of the law of England and Wales.

(4) This Chapter should be read with the guidance in Chapter 6 on how to refer to other pieces of legislation and describe their divisions and subdivisions. See Chapter 9 for guidance on drafting provisions which confer powers to amend other legislation.

7.2 Differences between amendments in English and Welsh

When amending bilingual legislation, the amendments required to produce a particular legal effect may be quite different in English and in Welsh, for example because of the different sentence structures in each language. In producing amendments, the focus should be on whether the same legal effect is achieved in both languages, rather than on whether the two sets of amendments look the same.

Operative words and format of textual amendments

7.3 Insertions and substitutions

(1) Amendments to insert new text should be in the following form:

after "trains" insert "or buses"

(2) Amendments to replace text should substitute the new text for the old text using the following form:

for "trains" substitute "buses"

(3) Note the following points of style:

(a) the existing text should always be mentioned before the new text, and any of the existing or new text that is set out in the amendment should appear in double quotation marks;

(b) the amendment should always be expressed in imperative form (e.g. as an instruction to "insert" new text) and **not** in declaratory form (e.g. as a statement that new text "is inserted").

7.4 Repeals and revocations

(1) Use the following imperative form to repeal or revoke anything less than a whole Act, Measure or instrument (i.e. to remove a Part or Chapter, or one or more complete provisions, or to remove words within a provision):

omit Schedule 3

omit "trains"

(2) But to remove a whole Act or Measure from the law of England and Wales use the following declaratory formulation:

The X Act is repealed.

(3) For secondary legislation and retained direct EU legislation the appropriate term is "revoked" rather than "repealed". For example:

The X Order is revoked.

7.5 Making a series of amendments to a piece of legislation

(1) This is about drafting a series of amendments to the same piece of legislation which are set out in a single section of an Assembly Bill, one or more regulations or articles of a statutory instrument, or one or more paragraphs of a Schedule.

(2) It is usual to include a provision in declaratory form introducing the amendments, but the individual amendments themselves should always be imperative. For example:

(1) The X Act is amended as follows.

(2) In section 1, after subsection (1) insert—

(3) The amendments should usually follow the order of the provisions being amended, as amending provisions out of order can be confusing and is more likely to go wrong. But if there is a main amendment and a number of minor amendments that follow from it, it may sometimes be more helpful to deal with the main amendment first.

7.6 Schedules of amendments and Schedules of repeals or revocations

(1) Where a Bill is making a large number of amendments to other legislation, it is common to put the amendments in one or more Schedules, or to put the main amendments in the body of the Bill but the minor ones in a Schedule. The same approaches may be taken in a statutory instrument (although instruments which consist entirely of consequential amendments sometimes set out all of the amendments in the body of the instrument).
In each case, consider which method of presenting amendments will be clearest to your readers, and try to be consistent.

(2) A Schedule of amendments should set out amendments in the following order:

(a) amendments to primary legislation (Acts of the UK Parliament and Assembly Acts and Measures);

(b) amendments to subordinate legislation (whether made by Ministers of the Crown or by the Welsh Ministers);

(c) amendments to retained direct EU legislation.

(3) Within each of these categories, amendments should generally be set out in chronological order. But it may sometimes be more helpful to start with the amendments to the main piece of legislation in the relevant area, before dealing with the others chronologically.

(4) A Schedule containing amendments to a number of pieces of legislation should normally be arranged under italic headings giving the names of the Acts, Measures or instruments being amended. The recommended style is like this:

Planning (Wales) Act 2015 (anaw 4)

1. In Schedule 2 to the Planning (Wales) Act 2015…

(5) Note that:

(a) the short title of the Act, Measure or instrument needs to be given in the text of the amendment as well as in the heading;

(b) the reference number of the Act, Measure or instrument (e.g. chapter number for an Act of the UK Parliament or anaw/*dccc* number for an Assembly Act) should be given only in the heading, and not repeated in the text of the amendment. (In a statutory instrument, the number is often given in a footnote instead, along with details of earlier relevant amendments.)

(6) It is possible to deal with all of the amendments to one piece of legislation in a single Schedule paragraph (with separate sub-paragraphs amending different provisions), or to have separate Schedule paragraphs dealing with each provision that is being amended.[32] If there are a lot of amendments to the same enactment, using a separate paragraph to amend each section or Schedule gives you another level of provision to work with, which may avoid the need to have very long paragraphs or use several levels of subdivision within each paragraph. Choose one approach and try to use it consistently throughout a Bill or instrument.

(7) Schedules of repeals are rare in Assembly Bills, which do not tend to contain many outright repeals. The amendments needed to ensure that legislation no longer applies to Wales are likely to consist of a mixture of textual amendments to remove Wales from provisions that will continue to apply to other parts of the UK, and repeals of provisions that apply only to Wales.[33] It is likely to be unhelpful to split amendments and repeals into different Schedules.

(8) Where a statutory instrument replaces a number of earlier instruments in whole or in part, a list of the instruments or provisions that it revokes may be included either in the body of the instrument or in a Schedule, under the heading "revocations" or "instruments revoked". The more instruments that are being revoked, the more likely it is that a Schedule will be appropriate.

Describing the location of a textual amendment: general points

7.7 Identifying the provision in which the amendment will be made

(1) An amending provision must make clear where in the existing legislation the amendment is to be made. There must be no room for doubt about which provision is being amended, or about where a new provision is to be inserted. See Chapters 5 and 6 for guidance on drafting cross-references and citing existing legislation.

32 For an example of a Schedule using one paragraph for all of the amendments to each piece of legislation, see Schedule 4 to the Qualifications Wales Act 2015; for an example of a Schedule using separate paragraphs for each section or Schedule being amended, see Schedule 4 to the Well-being of Future Generations (Wales) Act 2015.

33 Both types of provision would be regarded as "repeals" for the purposes of the provisions of Part 2 of the Legislation (Wales) Act 2019 about the effect of repeals: see section 37(1) of the Act. But a repeals Schedule traditionally contains only provisions that are removing material from the law.

(2) When describing a provision that is being amended, work down from the highest level of provision (such as the section or Schedule) to the level at which the amendment is being made. You can give the numbers of all the relevant divisions and subdivisions in a "composite" reference like this:

In section 3(1)(a), for "cars" substitute "buses".

(3) If an amendment refers to the provision it is amending in this way, it can give the title of the Act or instrument before or after the reference to the provision:

In the X Act, in section 3(1)(a), …
In section 3(1)(a) of the X Act, …

(4) Alternatively, you can name each division and subdivision separately, starting at the highest level and working down to the level where the amendment is made. That approach should be preferred when making multiple amendments to a provision, to avoid repetition and reflect the structure of the existing legislation. For example:

In section 3—
(a) in subsection (1)(a), for "trains" substitute "buses";
(b) in subsection (2), omit paragraph (a).

(5) If you refer to the provision in this way, you can give the title of the legislation before or after the reference to the highest level of division (such as a section or Schedule), but references to lower levels of provision should come afterwards:

In the X Act, in section 3, in subsection (1)(a), …
In section 3 of the X Act, in subsection (1)(a), …

(6) An amendment to a definition in an unnumbered list will need to identify the provision containing the definition, the definition that is being amended and any sub-division within it:

In regulation 2, in the definition of "local authority", in paragraph (b), …

(7) An amendment to any other unnumbered list should identify the location of the list and the entry that is amended. And an amendment to a table may need to identify both the entry and the column in the table where the amendment is to be made:

In Schedule 3, in the table in paragraph 2, in the entry for registered social landlords, in the second column, …

7.8 Making the same amendment in different provisions

(1) It may be necessary to make the same amendment to numerous provisions, for example if an existing concept or public body is being replaced with a new one. The clearest and safest approach is generally to identify each amendment separately.

(2) There is no objection to using a single amending provision to make a run of identical changes, for example by describing the change and then listing the provisions to be amended.[34] But do not jump around in the sequence of the existing legislation. For example, if you are making identical changes to subsections (1) and (3), and a different change to subsection (2), do not deal with subsections (1) and (3) together and then go back to subsection (2). Amend each subsection separately in the order in which it appears.

(3) In principle, a single "global" amendment could be used to change a term used throughout a piece of legislation. This may seem an attractive way to simplify the drafting, but it does not avoid the need to identify all of the changes that are needed, and in practice there are likely to be few cases where it is appropriate.

34 If the words affected by the amendment occur more than once in any of the provisions that you mention, you may also need to use one of the forms of words set out in paragraph 7.13.

(4) A global amendment should only be used if the drafter is certain that it works for every reference to a term, but that will rarely be the case. The existing legislation may use a number of variations of a term, such as plural and singular forms, possessives in English, and mutated forms in Welsh. Changing a name may also require changes to pronouns or verbs, which will have to be made separately. These issues are likely to arise more often when making changes in two languages.

(5) It may be possible to address these issues by making a number of additional global amendments, dealing separately with the possessive form of a noun in English, or with phrases containing mutated forms in Welsh. If a truly global amendment is unavoidable, and leads to a variety of mutations in the Welsh language text, that should be indicated by adding *"(gan dreiglo yn ôl yr angen)"*.

7.9 Identifying which language version of a bilingual enactment is being amended

(1) When amending a bilingual enactment in both languages, each language text of the amending Act or instrument will amend the corresponding language version of the existing legislation (i.e. the Welsh language text makes the amendment in Welsh, and the English language text makes it in English). There is no need for the amendment to identify which text of the existing legislation it affects.

(2) It is occasionally necessary to amend only the English language text or only the Welsh language text of a bilingual enactment. In that case, both texts of the amending Act or instrument will make the same amendment to one language text of the existing legislation, and the amending provision should identify whether the amendment is being made "in the Welsh language text" or "in the English language text". For example:

> In regulation 5, in the Welsh language text, omit "nad"
> Yn rheoliad 5, yn y testun Cymraeg, hepgorer "nad"

7.10 Parenthetical descriptions of provisions being amended

(1) It is common practice to include a brief description in brackets of the provision that is being amended, to help the reader to see what an amendment is doing. See paragraph 5.7 for general guidance on parenthetical descriptions.

(2) A parenthetical description of the provision being amended should be included only if it is useful. It is more likely to be helpful in the case of an important substantive amendment.

(3) A description may not be useful in a Schedule of consequential amendments, where there is no important substantive effect to describe (and fewer readers to describe it to). For example, if you are just changing the name of a body in all existing legislation, there may be little point describing every provision where the change is made.

(4) It is also unlikely to be worthwhile to give the description of a section **after which** a new section is inserted, unless there is a very close connection between the two.

Describing the location of an amendment within a provision

7.11 Identifying parts of a provision with paragraphs

(1) This is about amending a provision (such as a section or subsection) which is divided into paragraphs numbered (a), (b), (c) etc.

(2) If the amendment affects words that appear in more than one element of the provision, it will need to include wording to identify the relevant element.

(3) The words before the paragraphs should be identified as "the words before paragraph (a)" — or whatever the first paragraph is — and not as "the opening words".

(4) If there are words after the paragraphs, they should be identified as "the words after paragraph ( )" — giving the number of the final paragraph — and not as "the closing words".

(5) If the amendment affects words that appear only once, it is not necessary to specify whether the words appear before, in or after the paragraphs. But it can sometimes be helpful to do so (e.g. if the provision is particularly long).

7.12 Identifying text within a provision

(1) Where an amendment relates to a particular element of a provision, or particular words within a provision, there must be no doubt about where the amendment is to be made or which words it affects.

(2) Where an amendment quotes words in the provision being amended, there is no need to refer to them as "the words". For example, an insertion should be made "after "x"" rather than "after the words "x"".

(3) However, when repealing or replacing a large amount of text in a provision, it may not be helpful to set out all of that text in the amendment. The words that are being repealed or replaced may instead be described in the following ways:

the words from "x" to "y"

the words from "x" to the end

(4) Where an amendment describes a portion of a provision in this way, section 21 of the Legislation (Wales) Act 2019 means that the portion includes the words that are quoted. A provision which omits "the words from "x" to "y"" will therefore remove the words "x" and "y" as well as the text between them.

7.13 Replacing or adding to words that occur more than once

(1) Where words occur more than once in a provision and you want to identify one of the places where they appear, the following approaches are possible:

after "x", in the [first] [second] place it occurs, insert "y"

after the [first] [second] "x" insert "y"

after the [first] [second] reference to "x" insert "y"

(2) In some cases it may be simpler to replace slightly more text to avoid having to refer to the first or second instance of a word or phrase.

(3) Where a word or phrase occurs twice in the same provision and you want to cover both occurrences, the following approaches are possible:

after "x", in both places it occurs, insert "y"

after both references to "x" insert "y"

(4) Where a word or phrase occurs three or more times in the same provision and you want to cover every occurrence, the following approaches are possible:

after "x", in each place it occurs, insert "y"

after each "x" insert "y"

after each reference to "x" insert "y"

(5) While all of the approaches described above are acceptable, a Bill should adopt one of them and use it consistently.

(6) Do not put brackets around the words identifying the instances of the word or phrase, as brackets are generally reserved for material that is included to assist the reader but does not have substantive legal effect. But if you want to make the amendment in the heading as well as in each place in the body of a provision, you can make that clear by adding "(including the heading)".

7.14 Location of new text within a provision: after, at the beginning, at the end

(1) This relates to inserting new words into an existing division of text (such as a subsection or paragraph).

(2) The new text should normally be inserted "after" the word that precedes it.

(3) But when inserting text at the beginning of an existing division, the usual form is to say:

> at the beginning insert "x""

rather than to say that the new text is inserted "before" particular words.

(4) And when inserting text at the end of a division of text, the usual form is to say:

> at the end insert "x"

rather than to say that the new text is inserted "after" particular words.

(5) An amendment inserting words at the end of an existing division should say "insert" rather than "add".

Describing the location of a new provision

7.15 Location of a new provision: before or after

(1) This relates to inserting a new division of text (such as a Schedule, section, subsection, paragraph or subparagraph) within an existing series of provisions.

(2) It is usual to insert a new provision "after" another one.

(3) When inserting the highest level of division (such as a new section or Schedule in an Act), this may be done in either of the following ways:

> In the Renting Homes (Wales) Act 2016 (anaw 1), after section 177 insert—
>
> After section 177 of the Renting Homes (Wales) Act 2016 (anaw 1) insert—

(4) The approach of inserting the new provision "after" the provision that precedes it should also be used when inserting a new subdivision of text at the end of an existing division (e.g. a new subsection at the end of an existing section, or a new paragraph at the end of an existing Schedule).

(5) However, there are a number of cases in which it can be appropriate to insert a new division of text "before" an existing one:

(a) Where a provision is inserting a new section at the beginning of an Act, or a new first Schedule to an Act or instrument, it will need to make the insertion "before section 1" or "before Schedule 1".

(b) "Before" can be useful where a new provision is to be inserted at the beginning of a Part, Chapter, or group of provisions under a cross-heading, where inserting it "after" the preceding provision might lead to confusion as to whether it should appear at the end of the preceding Part, Chapter or group. For example:

> In Part 2, before section 5 insert—

(c) When inserting a new paragraph at the start of an existing list of paragraphs, the insertion should be made "before paragraph (a)" — or whatever the first paragraph is — rather than "after the words before paragraph (a)".

7.16 Insertions before or after unnumbered provisions

(1) To add a new subsection to a section that is not already subdivided, or a new sub-paragraph to a Schedule paragraph that is not subdivided, do the following:

(a) first renumber the existing text:

> In section 1 the existing provision becomes subsection (1)

(b) next make any amendments to the existing text (but if the amendments are significant, it may be better to replace the whole section or paragraph):

In that subsection, after "x" insert "y"

(c) then insert the new subsection or sub-paragraph after it:

After that subsection insert—

"(2) ..."

(2) Similar considerations apply when inserting a new Schedule into a piece of legislation that has a single unnumbered Schedule. If the new Schedule will come after the existing one, renumber the existing Schedule as Schedule 1 and then insert the new Schedule 2 after it. If the new Schedule will come first, renumber the existing Schedule as Schedule 2 and then insert the new Schedule 1 before it.

(3) When renumbering provisions in this way, check whether any cross-references to them also need to be amended.

7.17 Insertions in unnumbered lists

(1) When inserting an entry into an unnumbered list, such as a list of definitions or statutory bodies, make sure that there is no doubt about where the new entry should appear. The most precise way to identify the location of the amendment is usually to specify the existing entry after which the insertion is to be made.

(2) An insertion into an unnumbered list is sometimes framed as an amendment to insert text "at the appropriate place". This can be convenient when making a number of amendments to a list in bilingual legislation, where the new entries may well appear in different places in each language text.

(3) However, this approach is only appropriate if it is clear how the list has been ordered, for example where the list runs in alphabetical order. Even then, it may be helpful to provide some guidance to the reader, e.g. by referring to "the appropriate place in alphabetical order".

Numbering of inserted provisions

7.18 Use the English alphabet when adding numbered provisions

(1) The English alphabet is used for numbering units of text in both the English and Welsh language texts of Assembly Acts (see paragraph 2.7(5)). This practice also applied to Assembly Measures, and has applied to Welsh statutory instruments since 1 April 2012. So the following recommendations on adding numbered provisions apply to amendments to the Welsh text as well as the English text.

(2) However, Welsh statutory instruments made before April 2012 used the Welsh alphabet for numbering provisions in the Welsh text, and amendments to those instruments should follow the numbering style of the original.

7.19 Use Arabic numerals when adding Parts, Chapters etc.

(1) In some older Acts of Parliament and statutory instruments, Parts and Chapters are numbered using Roman numerals (see paragraph 6.18). Modern practice is to use Arabic numbering for Parts and Chapters. When inserting or substituting a Part or Chapter in legislation which uses Roman numerals, use Arabic numerals even if that leads to a mixture of numbering styles in the amended text. For example, a new Part inserted between Parts III and IV of an Act should be Part 3A.

(2) The same approach should be adopted when amending direct EU legislation which has been retained in domestic law under the European Union (Withdrawal) Act 2018. EU legislation may have Titles, Chapters or Annexes that are numbered using Roman numerals (see paragraphs 6.28 and 6.29). If you are inserting or substituting a Title, Chapter or Annex, use Arabic

numbering even if the original instrument used Roman numerals.

7.20 Adding provisions at the beginning of a series

The following applies when inserting a provision at the beginning of an existing series of provisions (e.g. a subsection at the beginning of a section or a Schedule before the first Schedule).

- New sections inserted before the first section of an Act are preceded by the letter "A" (A1, A2, A3 etc.).
- The same approach is taken in relation to all other divisions of text (other than lettered paragraphs). Thus the Historic Environment (Wales) Act 2016 inserted Schedules A1 and A2 before Schedule 1 to the Ancient Monuments and Archaeological Areas Act 1979.
- A provision inserted before "A1" (or "ai") is "ZA1" or ("zai").
- In the case of lettered paragraphs, new paragraphs inserted before paragraph (a) are (za), (zb) etc.
- And paragraphs inserted before (za) are (zza), (zzb) etc.

7.21 Adding provisions at the end of a series

Where adding a provision at the end of an existing series of provisions of the same kind (e.g. a subsection at the end of a section or a Schedule after the existing Schedules), the numbering should continue in sequence.

7.22 Inserting whole provisions between existing provisions

(1) The following applies when inserting whole provisions between existing provisions.

- New provisions inserted between 1 and 2 are 1A, 1B, 1C etc.
- New provisions inserted between 1A and 1B are 1AA, 1AB, 1AC etc.
- New provisions inserted between 1 and 1A are 1ZA, 1ZB, 1ZC etc. (not 1AA etc.)
- New provisions inserted between 1A and 1AA are 1AZA, 1AZB, 1AZC etc.

(2) Do not generate a lower level identifier unless you have to.

- A new provision between 1AA and 1B is 1AB (not 1AAA).
- But a new provision between 1AA and 1AB is 1AAA.

(3) The above recommendations apply equally to lettered paragraphs and to sub-paragraphs with Roman numerals.

- New paragraphs between paragraphs (a) and (b) are (aa), (ab), (ac) etc.
- New paragraphs between paragraphs (a) and (aa) are (aza), (azb), (azc) etc.
- New sub-paragraphs between sub-paragraphs (i) and (ii) are (ia), (ib), (ic) etc.

7.23 Insertions resulting in a series of more than 26 lettered provisions

After a number ending with Z use Z1, Z2, Z3 etc. For example, after section 61Z insert sections 61Z1, 61Z2 etc. After paragraph (z) insert paragraphs (z1), (z2) etc.

7.24 Re-using numbers

(1) If an amendment removes a complete subdivision of text (e.g. a subsection) and inserts a new subdivision which is in substance a replacement for it (because it deals with the same subject matter), the amendment should take the form of a substitution and the number of the existing subdivision may be re-used.

(2) If a new provision is to be inserted in the same place as an existing one but is not intended as a replacement for it, make two separate amendments to omit the existing provision and insert the new one, and do not re-use the numbering of the old provision.

(3) When inserting a complete subdivision of text (e.g. a subsection) in a place where a subdivision of the same type has previously been repealed, the numbering of the repealed provision should not be used for the new provision.

(4) If the repealed provision was the last in a series (e.g. the last subsection in a section), give the new provision the next number after the repealed provision. For example, if a section ends with subsection (4) because subsection (5) has been repealed, a new subsection at the end should be numbered (6) not (4A).

What to include in textual amendments

7.25 How much text to substitute

(1) The starting point when drafting a substitution is that it should replace the minimum amount of text. In most cases, this will be less likely to go wrong and will make it easier for the reader of the amending Bill or instrument to identify what is changing.

(2) However, in some cases it will be helpful to the reader of the amending legislation, or to the reader of the legislation that is being amended, to substitute additional text (or even to substitute a whole provision rather than make an amendment within it). For example, this may be the case:

(a) where a number of related changes are being made to a single provision;

(b) where the end result of a group of amendments would be to alter the whole basis of an existing provision or to leave very little of the previous text;

(c) where doing so makes it easier to identify the text substituted (see paragraph 7.13(2));

(d) to improve the consistency of the amended provision, for example where the amendments would otherwise leave the provision containing references to the Welsh Ministers as well as references to the Secretary of State or old National Assembly which must now be read as referring to the Welsh Ministers.

(3) Where there have been previous amendments to the provision that is being amended, substituting more text than is strictly necessary may also help in the following situations:

(a) substituting additional words may enable the drafter to replace all of the text inserted by an earlier amendment, with the result that the earlier amending provision is redundant and can be repealed (see also paragraph 7.35);

(b) where the provision to be amended has previously been amended non-textually, there may be doubt about which words remain to be textually amended. You may be able to avoid that difficulty by removing or replacing text starting before the words that are in doubt and ending after them (i.e. text "from" a word that appears before the doubtful words "to" a word that appears after them).[35]

35 There are numerous examples of this approach in Schedule 2 to the Natural Resources Body for Wales (Functions) Order 2013 (e.g. paragraphs 1 and 8-11).

(4) The risks of substituting more text than is strictly necessary include:

(a) missing a cross-reference, non-textual modification or an old saving, and

(b) suggesting that changes are being made to text which is not in fact changing.

7.26 Amending conjunctions and punctuation in provisions with paragraphs

(1) Where an amendment repeals or replaces a paragraph or sub-paragraph which is followed by a conjunction, it needs to be clear whether or not the conjunction is being removed. Although the conjunction is generally considered not to form part of the paragraph or sub-paragraph, the usual practice is to spell out whether or not the amendment is intended to affect the conjunction.

(2) Since the conjunction is not considered to be part of the paragraph, the amendment should not say that it is omitting the paragraph "including" the conjunction. Instead, an amendment which deals with a conjunction should be in the following form:

omit paragraph (a) and the "and" after it

omit paragraph (b) (but not the "or" after it)

(3) The insertion or removal of a paragraph may mean that a conjunction after another paragraph is no longer needed or should be moved. In that case, it will be necessary to include amendments to remove the existing conjunction and (where appropriate) to insert a new one in the correct place. It is acceptable to repeal the last paragraph and the conjunction that precedes it in a single amendment:

omit paragraph (d) and the "or" before it

(4) Do not include separate amendments that only correct punctuation at the end of paragraphs or sub-paragraphs without affecting the text. For example, when repealing the last paragraph in a subsection, do not include an amendment just to replace a comma or semi-colon at the end of the preceding paragraph with a full stop (but make sure to deal with any conjunction that need removing or inserting).

7.27 Amending headings

(1) It is acceptable to amend the heading of a provision or set of provisions. In particular, it may be helpful to do so if the heading is falsified by a textual amendment to the provisions. But there is no need to amend a heading merely because it is not ideal for the amended text.

(2) In some cases a heading needs to be changed without there being a change to the text under the heading. These include cases where a parallel set of provisions is added after existing provisions and headings are needed to distinguish and connect the neighbouring sets of provisions. An example would be if an Act of the UK Parliament contains provisions that apply only to England and new provisions are inserted after them that apply only to Wales.

(3) Amendments to headings should be drafted in the same way as amendments to operative provisions (i.e. as instructions to insert, substitute or omit text).

(4) In a list of amendments to a provision (such as a section or regulation), an amendment to the heading may be included at the start of the list, and that should be the usual approach when making a series of purely consequential amendments. The amendment to a section heading should therefore appear after the words which provide that the section is amended "as follows" but before the amendments to the operative material in the section.

(5) Alternatively, if you are making more significant amendments to a provision, it may be appropriate to leave the amendment to the heading to the end, on the basis that it follows from the substantive changes.

(6) A section, regulation, Part, Chapter or Schedule has a "heading" rather than a "title". And it is the heading "of" the relevant division of the legislation rather than "to" it. For example, an amendment might be made "in the heading of Part 3".

(7) An italic cross-heading before a group of provisions, or an italic heading within a Schedule, should be described as "the italic heading before" the provision that follows the heading.

Other points relating to the drafting and effect of amendments

7.28 Amending legislation that applies or extends to other parts of the United Kingdom

(1) Assembly Acts may amend Acts of the UK Parliament so that new provisions are inserted that apply only to Wales, or so that existing provisions cease to apply to Wales. Similarly, the Welsh Ministers may make amendments that apply only to Wales in subordinate legislation that applies to other parts of the United Kingdom.

(2) When making this kind of amendment, make sure that the territorial application of the resulting provisions in the amended legislation will be stated clearly on the face of that legislation. Wording will need to be inserted describing the cases to which the inserted or amended provisions apply, unless something in the amended legislation already deals with their application in the correct way.

(3) Do not draft an amendment that appears to apply generally, but whose application is limited to Wales by a provision that sits only in the amending Act or instrument. The effect on the text of the amended legislation may be unclear, and readers of that legislation may not realise that the amendment has limited application.

(4) Assembly Acts and instruments made under them extend only to the legal jurisdiction of England and Wales, but do not include provisions about extent (see paragraph 10.10). This approach applies equally where an Act or instrument amends or repeals provisions in legislation that extends beyond England and Wales. There is no need to spell out that the amendment or repeal only affects the law of England and Wales, because an Assembly Act cannot affect the law of any other jurisdiction.

(5) Occasionally an existing provision forms part of the law of England and Wales and of Scotland or Northern Ireland, but has ceased to apply to England. If the intention is that the provision should now cease to apply to Wales, the end result will probably be that it no longer forms part of the law of England and Wales. In general, the best way to achieve that result will be to simply repeal the provision: the repeal will have effect in the law of England and Wales but not of any other jurisdiction.

7.29 Interpretation and effect of inserted text

(1) Where an Act or instrument inserts or substitutes text in an existing piece of legislation, the presumption is that the meaning and effect of that text will be governed by the interpretation provisions relevant to the amended legislation. That position is now reflected in section 32 of the Legislation (Wales) Act 2019.

(2) The interpretation provisions that apply to the amended legislation may be different from those that apply to the amending Act or instrument. There may therefore be cases where the same word or provision could have a different effect according to whether it appears in an amendment to existing legislation or in a free-standing provision of the new legislation.

(3) The interpretation provisions that apply to a new Assembly Act or Welsh subordinate instrument include Part 2 of the Legislation (Wales) Act 2019. But material inserted into the following kinds of legislation will be subject to the Interpretation Act 1978 instead:

(a) Act of the UK Parliament;

(b) Assembly Acts that received Royal Assent before 2020;

(c) Assembly Measures;

(d) Welsh subordinate instruments made before 2020;

(e) retained direct EU legislation.

(4) Most of the rules in the 2019 Act have the same effect as those in the 1978 Act, and are subject to any contrary intention in the same way as the rules in the 1978 Act. However, when drafting amendments to enactments to which the 1978 Act applies, you will need to be aware of the differences between the rules in the two Acts. The following table summarises a few of the main differences.

Legislation (Wales) Act 2019, Part 2	**Interpretation Act 1978**
Narrower provision for anticipatory exercise of powers (see paragraphs 10.7 and 10.9)	Wider provision for anticipatory exercise of powers
General power to vary and withdraw directions (see paragraph 9.17)	No provision about directions (so may need express power to vary or withdraw)
References to other enactments are to the enactments as amended at any time (see paragraph 6.8)	References to other enactments do not necessarily include future amendments
Legislation binds the Crown unless it makes express provision to the contrary (see paragraph 10.4)	No provision about this (so express provision may be needed to displace presumption that Crown is not bound)
Default definition of "Wales" includes both land and territorial sea (see paragraph 3.25)	Default definition of "Wales" only includes county and county borough council areas (i.e. land)

7.30 Consistency with style of original legislation

(1) Text which is being inserted into existing legislation should generally follow the recommendations in these guidelines. However, consistency with the style of the original legislation is also a relevant consideration, and it can be a reason for departing from these guidelines in cases where following them might cause real confusion. The case for consistency with the original is likely to be stronger when inserting words into an existing provision than when inserting whole new provisions.

(2) Inserted and substituted text should normally avoid using archaic language and unnecessary words. It should not use "shall" unless it is being inserted into text that already uses "shall" in the same way, and it should use gender neutral language wherever possible. See paragraphs 3.14 and 3.24 for more guidance on these issues.

(3) Where the effect of legislation has been changed by a non-textual modification, drafting inserted text in the same way as the original may lead to the wrong result. Particular care is needed where legislation conferred functions on the Secretary of State which have since been transferred to the Welsh Ministers. Inserting new references to the Secretary of State could give new functions to the wrong person.

7.31 Punctuation of amendments

(1) Inserted or substituted text should be punctuated in the same way as the text that is being amended. For example, it should follow the same approach as the original to using commas or semi-colons at the end of paragraphs.

(2) Punctuation which forms part of the amending provision (rather than of the inserted or substituted text) should be included outside the quotation marks. But where inserted or substituted words end with a full stop before the closing quotation marks, do not include another full stop after the closing quotation marks.

Dealing with provisions which have been amended or are not yet in force

7.32 Amending provisions that are not in force

(1) Do not ignore legislation that is not yet in force. You should generally assume that uncommenced legislation will be brought into force, and keep it in a state where it could be brought into force. So if the policy behind a Bill or instrument requires changes to a provision, or would require changes to it were it in force, the provision should normally be amended accordingly.

(2) There are sometimes questions about whether an amendment to an Act is to be brought into force using powers in the amending Act or powers in the amended Act.

(3) The starting point is that how and when the provisions of an Act come into force is determined by that Act. This includes any provisions of that Act amending existing legislation that is not yet in force. Conversely, the provisions in an Act about when it comes into force are not intended, at the time of enactment, to apply to all text that happens to be added to it by later amending Acts.

(4) In some cases the drafter can and should rely simply on the "coming into force" provision in the amending Act. For example, if the policy is that an uncommenced provision in an earlier Act should come into force and operate for a while without the amendment made by the amending Act, the later coming into force of the amendment can only depend on the provision in the amending Act.

(5) Or again, an amendment may consist of the insertion of free-standing provision that is capable of having effect without reference to neighbouring uncommenced provisions of the Act being amended. Such added provision could be brought fully into force by or under the amending Act, without any reliance on the amended Act's commencement provisions.

(6) There may be cases where a drafter would want the text added by a Bill to come into force in accordance with the provisions of the Act being amended. The drafter might, for example, want that Act's power to make transitional provision in connection with its coming into force to apply to its provisions as amended by the Bill. That is perhaps particularly likely where the amendment has no meaning on its own.

(7) In some cases it may be obvious that the amendment made by the Bill itself impliedly modifies the Act's coming into force provisions so that they apply to the amended text as they would have applied to the unamended text. This approach seems most reasonable where the text added by the amendment cannot operate independently of the provision amended.

(8) But if in any given case it is not obvious that this is the intention of the amending Act, then specific provision will be needed to apply the provisions of the amended Act about when it comes into force.

7.33 Amending a provision subject to an amendment that is not in force

(1) If a provision of an existing Act or instrument is subject to an amendment or complete substitution that is not yet fully in force, you will need to consider both the original version of the provision and the amended or substituted version. The policy of a new Bill or instrument may make it necessary to amend both versions.

(2) Where there are two versions of an existing provision, the amending provisions in a new Bill or instrument should always make clear which version is being amended. They can do that by referring to:

(a) the provision as amended or substituted by the uncommenced amending legislation (when referring to the prospective version), or

(b) the provision "as it has effect before" the amendment or substitution comes into force (to mean the old version).

(3) Even if the same amendment is required to both versions of the provision, it may be helpful to spell out that the amendment is intended to apply to the provision "as it has effect before and after" the earlier amendment or substitution comes into force.

(4) If you are amending text which is to be inserted into Act X by a provision of Act Y which is not yet in force, it is generally sufficient to operate on the amending provision of Act Y (although it is also possible to amend the prospective provision of Act X). In either case, it is helpful to include wording to indicate that you are amending text which Act Y inserts into Act X. For example:

> In Schedule 1 to the Y Act, in paragraph 2, in the subsection (1A) which is inserted into section 5 of the X Act, …
>
> In section 5 of the X Act, in the subsection (1A) which is inserted by paragraph 2 of Schedule 1 to the Y Act, …

(5) Sometimes an earlier amendment inserting a provision into an Act will be partly in force (for example, where a new general provision about appeals is in force for some types of appeal but not others). To the extent that the insertion of the provision is in force, you will need to operate on that provision in the amended Act (whether or not you are also operating on the amending Act so far as it is not in force).

(6) The position is similar if the new policy is that an uncommenced provision of Act Y which inserts material into Act X should not take effect. If the insertion applies only to Wales and is not in force for any purpose, it is enough simply to repeal it. But it may also be helpful to include an amendment to Act X to make clear that the prospectively inserted text is removed (as well as repealing the provision in Act Y); and it will be necessary to do so if the insertion is in force for any purpose.

7.34 Amending a provision subject to a repeal that is not in force

(1) Do not ignore a provision merely because it is subject to a repeal that has not come into force. The provision should be amended if the policy of your Bill or instrument requires a change to the provision so long as it remains unrepealed.

(2) Where a Bill amends a provision that is subject to an uncommenced repeal, there may be a question about whether the repeal, when brought into force, will apply to the provision as afterwards amended. The drafter will need to check the provisions that relate to the repeal and its coming into force in the Act containing the repeal.

(3) If the repeal is contained in an Act or instrument to which Part 2 of the Legislation (Wales) Act 2019 applies, section 25 of that Act creates a presumption that the repealing provision refers to the original provision as amended at any time.

(4) Nevertheless, an amendment to the original provision should include wording to indicate that it is due to be repealed. One possible solution is for the Bill to make transitory provision that has effect only until the repeal is fully in force.

(5) A provision which has not yet been repealed will sometimes be spent, meaning that the situations to which it applied can no longer exist. If a provision is spent, it can be ignored rather than amended, even if it is subject to a repeal that is not yet in force. There is no point updating a provision which no longer has any practical effect. But be sure that the provision is truly spent – the fact that the repeal has not been brought into force might suggest a decision to keep the provision in force.

7.35 Repealing earlier amendments and repeals

(1) An amendment to a provision may mean that an earlier amendment to it is completely superseded, for example because the new amendment repeals or replaces all of the original provision or everything that the previous amendment inserted. It is good practice to repeal the earlier amendment if it is completely superseded. If an earlier amendment is not completely superseded, do not repeal it.

(2) It is not common to repeal earlier repealing enactments. But if you are now repealing the rest of the Act that contained the earlier repeal, it is usually tidier and less confusing for the reader to repeal the whole of that Act than to carve out the repeal provision. Repealing an earlier repeal does not revive the enactment that was previously repealed: see section 33 of the Legislation (Wales) Act 2019. But if the earlier repeal was subject to savings, it will be necessary to consider whether anything needs to be done to preserve their effect.

Non-textual modifications

7.36 Using non-textual modifications

(1) A non-textual modification (or "gloss") is a modification of an enactment that is not intended to result in a change to the text of that enactment when it is next published.

(2) Non-textual modifications may be used to apply existing provisions to a new purpose or case, which can avoid the need for extensive repetition of very similar material. However, this kind of modification can make life more difficult for readers, who will have to construct the story for the new situation from two sets of provisions. It is therefore more likely to be appropriate where the modifications needed for the new situation are relatively simple or few in number; if they are extensive, it is often better to set out the provisions for the new situation in full.

(3) If the existing legislation was enacted only in English, applying it to a new situation with non-textual modifications will not produce fully bilingual provisions for the new situation. An advantage of restating the provisions in full with the necessary modifications is that there will be a bilingual text.

(4) The fact that a provision has been applied to another situation with modifications may also make it harder for drafters of future legislation to determine how to refer to the provision or amend it. And if the provision is later amended, it will be necessary to consider whether the modifications still apply to it and whether they need amending to continue working. You will need to bear in mind the effect of section 25 of the Legislation (Wales) Act 2019 (which provides that references to enactments are to them as amended at any time), both on glossing provisions in Acts and instruments, and on later references to the provisions they have modified.

(5) Non-textual modifications may also be used to require an existing provision to be read in a different way, either generally or for particular purposes. This kind of modification gives rise to very similar issues, but it can be particularly useful as a way of dealing with an unusual or temporary state of affairs. The glossing provision does not amend the text of the existing

provision and so can be ignored in ordinary cases or after the circumstances in which it applied have come to an end.

7.37 Need to avoid formulations used in textual amendments

(1) There have been occasions where it has not been clear to readers whether something is a textual amendment or a non-textual modification. Sometimes legal publishers have even printed non-textual modifications as textual amendments. It is therefore important to make clear what is intended, and to avoid writing non-textual modifications so that they look like textual amendments.

(2) Non-textual modifications have sometimes been drafted in essentially the same form as a textual amendment, the only difference being in the opening wording. For example (to avoid):

> (1) Section 3 applies to the Welsh Ministers as it applies to a local authority but with the following modifications—
>
> (a) in subsection (1) for "its area" substitute "Wales"; and
>
> (b) in subsection (2) omit "with the agreement of the Welsh Ministers".

(3) This might readily be mistaken for a textual amendment. The opening words give a clue that something other than a textual amendment is intended, but the rest is exactly the same as a textual amendment. It would be particularly easy to lose sight of the opening words if the list of substitutions and other changes were very long.

(4) It would be clearer, in the first place, if the subjunctive mood were used to indicate that there is no intention actually to substitute different text. For example:

> (1) Section 3 applies to the Welsh Ministers as it applies to a local authority but as if—
>
> (a) in subsection (1) for "its area" there were substituted "Wales", and
>
> (b) in subsection (2) "with the agreement of the Welsh Ministers" were omitted.

(5) Better yet, though, would be to avoid the reference to substitution altogether. The recommended approach is therefore as follows. For example:

> (1) Section 3 applies to the Welsh Ministers as it applies to a local authority but as if—
>
> (a) in subsection (1) the reference to the authority's area were to Wales; and
>
> (b) in subsection (2) the reference to the agreement of the Welsh Ministers were omitted.

Chapter 8: Periods of time

8.1 Introduction

(1) Identifying the start or end of a period of time mentioned in legislation can often have important consequences, such as determining when a person must submit an application or give a notice.

(2) In describing a particular period of time, you should seek to ensure:

(a) that it is certain when the period begins and ends;

(b) that the wording makes it as easy as possible for the reader to understand when the period begins and ends, without having to refer to case law;

(c) that the period is expressed as simply as possible.

(3) This Chapter contains guidance about expressing periods of time in ways that meet these objectives[36].

(4) See Chapter 3 for style guidance on how to refer to numbers and dates.

8.2 Periods triggered by events: fractions of days

(1) Legislation often needs to describe a period by reference to an event. An example is a period of 14 days for appealing against a decision, where the event which triggers the start of the period is the decision to which the appeal would relate.

(2) In this example, it might be supposed that the appeal period should run from the moment the decision is made. But this would cause problems, because the decision will have been made part-way through a day, whereas an appeal period expressed in whole days (or weeks, months or years) will be counted from the beginning of a day. The question is, which day? It is a question of policy whether to include the day of the decision or other event, but instructions are not always clear on this point.

(3) If you want to exclude the day of the trigger event, the best approach is probably to start the period with the day after the day of the event, and to require action to be taken "within" the relevant period (see below). But it may be wrong in policy terms for an appeal period to start running at the beginning of the day after the decision, because that would prevent an appeal on the day of the decision.

(4) If the period starts at the beginning of the day of the event, it will technically include the part of that day before the event takes place. That may not cause any problems in practice (for example, it will be impossible to appeal against a decision before it is made). But if the period for an appeal or other action is short, it may be worth considering whether as a matter of policy the number of days should be increased by one, to take account of the fact that in practice the first day may not be available.

(5) It may not always produce the right result to begin a period at the start of the day on which a particular event occurs: each case needs to be considered on its own merits. If it is important to include only the part of the day after the event, the drafting will need to make it clear that only that part of the day is included.

36 The guidance is intended to reflect the approach of the courts of England and Wales to interpreting periods of time specified in domestic legislation. For EU instruments, including those which become retained direct EU legislation on exit day, the rules for interpreting periods of time are set out in Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 (which will itself become retained direct EU legislation on exit day).

8.3 Describing the beginning of a period

(1) An unambiguous way of ensuring that a period starts at the beginning of a particular day is to describe the period as (say) "14 days beginning with [that day]". Where the policy is that the period should include all of the day in question, this formulation is to be preferred.

(2) Do not refer to a period beginning "on" a particular day, because that leaves open the question of the exact time on the day in question when the period begins. (Providing for something to take effect "on" a particular day can also be problematic for the same reason. That approach should not be used, except in the case of provisions bringing legislation into force: see Chapter 10.[37])

(3) Also avoid referring to a period running "from" or "as from" a particular day or event, because these formulations are ambiguous in ordinary usage. Although a court will usually interpret a period of days or months "from" a particular event as excluding the day of the event, readers of the legislation may very well be unaware of that.

(4) A period described as a number of days "after" a particular event will also generally be taken to exclude the day when the event occurs. But if the policy is to exclude the day of the event, use a clearer formulation.

(5) One option is to refer to the period "after the day on which" the event takes place (rather than to a period after the event itself). Another way to avoid ambiguity is to provide for the period to begin at the start of the next day, by referring to a period "beginning with the day after the day on which" the event takes place.

8.4 Describing the end of a period

(1) When you need to describe the end of a period, referring to the period "ending with" a particular day makes it clear that the day is counted in the period.

(2) Avoid referring to a period ending "on" a particular day, which may give rise to doubt about the time on that day when the period ends.

(3) When referring to the end of a period, legislation sometimes refers to the "expiry" of the period. The same effect usually can be achieved, in slightly plainer English, by referring to the "end" of the period (and *"diwedd"* is used in both cases in the Welsh language text).

8.5 "Within" or "before the end of" a period

(1) Legislation often requires something to be done "within" a particular period or "before the end of" a period. These formulations will not necessarily produce the same result.

(2) A requirement to do something "within" 3 weeks beginning with a particular date limits the time in which the action may be taken to that period of 3 weeks. A requirement to take an action "before the end of" the 3-week period would apparently allow the action to be taken at any time up to the end of the period, including at any time before the period began. (But it might not have that effect if it is shown that there was a different intention.[38])

(3) In some cases, the practical effect of each formulation will be the same in any event. An example would be where a copy of a document must be given within/before the end of 3 weeks beginning with the date when the document comes into existence. But in other cases, the different wordings may produce materially different results.

37 In the case of a provision bringing legislation into force on a particular day, section 29 of the Legislation (Wales) Act 2019 makes clear that the legislation comes into force at the beginning of the day.

38 See *R (Hillingdon LBC) v Secretary of State for Transport* [2009] EWHC 3052 (Admin).

(4) A requirement to do something "by the end of" a period would seem to amount to the same thing as a requirement to do it "before the end of" the period.

8.6 Dealing with the ends of periods and avoiding gaps between periods

(1) Legislation often needs to describe periods that run consecutively, or to distinguish between things that happen before and after a particular point in time. In these cases it is important to avoid creating unintended gaps or overlaps between periods.

(2) Where a provision is intended to take effect or cease to have effect when a period comes to an end, it is generally sufficient to provide for the change in legal effect to take place "at the end of the period" and this approach is used to bring provisions into force on a fixed date: see paragraph 10.7). This will mean that the new state of affairs applies only to times after the end of the period.

(3) It may sometimes be desirable for a provision to make clear that it is referring to something that will happen as soon as a period of time has ended, or to a day or period which follows straight after the period in question without a gap. It may do so by referring to an event, day or later period occurring "immediately after the end of" the period.

(4) Care is needed when consecutive periods are defined by reference to a particular day. For example, if provisions deal with things that happen "before" a specified day and "after" the same day, they will leave the day itself unaccounted for. To avoid a gap, the provisions could instead refer to things that happen "before" a specified day and "on or after" that day.

(5) Where it is possible to specify the actual dates with which one period ends and the next one begins, it is usually clearer to do so, for example by referring to the periods "ending with 31 March" and "beginning with 1 April".

8.7 Notice periods

(1) Where it is proposed that one person should be required to give another person a certain period of notice before exercising a power, it is important to obtain instructions about whether that period includes the day on which the notice is given and the day on which the power is exercised.

(2) If a provision requires (for example) "7 days' notice" before a power is exercised, it may not always be clear precisely when the period starts and ends. Depending on what result is intended, a useful way to deal with this issue can be to provide for a period of (say) "7 clear days' notice". The reference to "clear days" indicates that both the day on which the notice is given and the day on which the power is exercised are excluded from the 7-day period. "Clear days" are defined in some legislation (such as rule 2.8 of the Civil Procedure Rules 1998) but the phrase is normally clear enough that no definition is required.

(3) Instead of requiring 7 clear days' notice, the same result could be achieved by providing that the power may not be exercised until the end of 8 days beginning with the day on which notice is given, but that may not always be a natural way to describe the notice period.

(4) A provision specifying a minimum notice period should also include wording to make clear that the period is a minimum, such as "at least". A minimum period of clear days might therefore be expressed as (for example) "at least 7 clear days".

8.8 "The period of"

Legislation often refers to a period as (for example) "the period of 7 days". But consider whether the words "the period of" could be omitted. In many cases they do not add anything, and you could simply refer to "7 days". If a reference back is needed, it may be possible to say "those 7 days" instead of "that period".

8.9 Units of time

(1) Periods of time are commonly expressed in days, weeks, months or years. Both policy and drafting considerations may affect which unit of time is used.

(2) Periods of months are a particular problem, both because months have different lengths, and because readers of legislation may be unaware of the rules that are applied when calculating periods expressed in months (see below).

(3) If it is important in policy terms that a period should have exactly the same length in all cases, the period should not be expressed in months. Even if that is not a concern, consider whether periods would be better expressed in weeks or days rather than months, at least for periods of up to 3 or 4 months.

(4) For longer periods, it may be less helpful to readers to use short units of time. For example, whereas readers will generally know that 30 days is about a month, they may find a period expressed as 150 days less readily understandable.

(5) It may be appropriate to express a short period in hours rather than days, for example where the period is less than a day, or where it is intended to run from the precise moment when an event occurs rather than from the start of a day.

8.10 Periods expressed in months

(1) Where a period expressed in months starts at a time other than the beginning of a month, when does it end? Schedule 1 to the Legislation (Wales) Act 2019 defines a month as a calendar month, but that does not give a complete answer to the question.

(2) A period of months expressed to begin "after" a particular day or event is calculated using the "corresponding date rule" in *Dodds v Walker* [1981] 1 WLR 1027. In that case, where an application had to be made "not more than 4 months after" the giving of a notice on 30 September 1978, the last date for making the application was 30 January 1979. The period ended at the end of the day in January 1979 corresponding to the day in September 1978 after which the period began.

(3) A period expressed as a number of months "beginning with" a particular date will expire at the end of the day before the corresponding date in the relevant month. So if the period in *Dodds v Walker* had been expressed as "4 months beginning with" the giving of notice on 30 September 1978, the last date for making the application would have been 29 January.

(4) Because some calendar months are shorter than others, there will not always be a "corresponding date" if a period runs from a day at the end of a month. The rules have to be modified in those cases, so that the period ends with the last day of the final month. For example, where a period of one month starts at the end of 30 January, it ends at the end of 28 February (or 29 February in a leap year).

(5) The effect of these rules is that the length of a period expressed in months varies according to when in the year the period begins. A period of one month beginning with 5 April is shorter than a period of one month beginning with 5 May, because April is shorter than May.

8.11 Working and non-working days

(1) Where an Act requires a person to do something within a period that ends on a weekend or bank holiday, that does not generally entitle the person to do the thing on the next working day[39]. If the policy is that non-working days should be treated differently from other days, you will need to make express provision to that effect.

(2) Whether weekends or bank holidays are included in a period may make a big difference, particularly if the period is short. The policy might be to count only working days as part of the period, or to extend the period to include the next working day if it would otherwise end on a weekend or bank holiday.

(3) If any non-working days are to be excluded from a period, it will be necessary to consider exactly which days these should be. Schedule 1 to the Legislation (Wales) Act 2019 contains the following standard definition of "working day" which will apply unless it is excluded by the context or express provision[40]:

> "working day" means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 (c. 80)

(4) Note that Christmas Day and Good Friday are not technically bank holidays. Schedule 1 to the Banking and Financial Dealings Act 1971 lists some bank holidays, but others may be created by royal proclamation under section 1(3). In England and Wales, the early May bank holiday and New Year's Day bank holiday are created in that way.

8.12 Financial years

(1) Schedule 1 to the Legislation (Wales) Act 2019 defines a "financial year" as a year ending with 31 March. This definition will apply to any reference to a "financial year" unless it is excluded by the context or by express provision. (In contrast, the definition in Schedule 1 to the Interpretation Act 1978 applies only in certain contexts relating to taxation and central government.)

(2) In legislation establishing a new public body, it may be necessary to make provision about the body's first financial year if it is established on a date other than 1 April.

39 But if a step can only be taken if a court office is open, and the period for taking the step would end on a day throughout which the court office is closed, the period is generally treated as ending on the next day when the office is open. See for example *Pritam Kaur v S Russell & Sons* [1973] QB 336; *Mucelli v Government of Albania* [2009] 1 WLR 276; *Yadly Marketing Co Ltd v Secretary of State for the Home Department* [2017] 1 WLR 1041.

40 The Interpretation Act 1978 does not contain a general definition of "working day", so it may be necessary to include a definition when inserting a reference to a "working day" into legislation to which that Act applies.

Chapter 9: Powers to make subordinate legislation and give directions

Introduction

9.1 Overview of Chapter

(1) This Chapter gives guidance on drafting provisions of Assembly Acts which enable matters to be dealt with in subordinate legislation rather than being set out in the Act itself.

(2) The Chapter includes guidance about wording to use:

- to confer a power to make subordinate legislation;
- to ensure that subordinate legislation can make certain types of provision (such as consequential provisions and amendments to primary legislation);
- to require that subordinate legislation is made by statutory instrument and to apply negative or affirmative Assembly procedure.

(3) The Chapter also contains guidance on certain issues that may arise when drafting provisions of primary or subordinate legislation about giving directions.

(4) Guidance on deciding whether to deal with an issue in primary or subordinate legislation, and on deciding which Assembly procedure should apply to a statutory instrument, is set out in Chapter 10 of the Legislation Handbook on Assembly Bills.

Form of powers to make subordinate legislation

9.2 Regulations not orders

(1) Powers for Ministers to make subordinate legislation by statutory instrument should generally take the form of powers to make "regulations" rather than an "order". This approach has been followed in Bills introduced in the Assembly and the UK Parliament since 2014.

(2) This approach does not apply to powers to bring provisions of an Assembly Act into force, which should continue to take the form of powers to make orders. In this respect, the practice for Assembly Bills differs from that for Parliamentary Bills (which have conferred powers to make "commencement regulations" since 2014).

(3) It may also be appropriate to confer a new power for the Welsh Ministers to make subordinate legislation in the form of an order when amending an Act that already contains order-making powers, if that is the most convenient drafting approach.

(4) The general approach of giving Ministers power to make regulations does not rule out using other forms of subordinate legislation where appropriate. For example, the procedures of public bodies and tribunals are usually set out in "rules"; and it is common to use a "scheme" to transfer rights and liabilities between bodies or to set fees and charges.

(5) The general approach is intended to improve consistency, but whether a power for the Welsh Ministers to make subordinate legislation is described as a power to make regulations, rules or orders will not necessarily have any practical significance. Where the Welsh Ministers have a power to make one of those forms of subordinate legislation by statutory instrument, section 39 of the Legislation (Wales) Act 2019 enables them to make the subordinate legislation in any other of those forms. For example, a power to make an order can be also used to make a set of regulations. Section 39 applies regardless of how or when the power was conferred.

(6) The general approach of giving Ministers powers to make regulations rather than orders applies to subordinate legislation made by statutory instrument. It does not mean that Acts should not create powers to make other kinds of order, such as compulsory purchase orders or orders made by courts or local authorities.

9.3 Methods of conferring powers

(1) The most common formulation for conferring a power to make regulations has been "The Welsh Ministers may by regulations…". This is direct and unambiguous, although it does not follow the normal sentence structures of English and Welsh. You could consider using slightly more natural language to achieve the same effect by saying "The Welsh Ministers may make regulations that…".

(2) A briefer and equally acceptable formulation, which has been used increasingly in recent Acts, is "Regulations may…". This avoids repeating references to the Welsh Ministers and may therefore help to simplify a Bill that contains numerous regulation-making powers.

(3) Where this formulation is used, the Act needs to spell out who has the power to make the regulations. It may do so by making general provision that "Regulations under this Act are to be made by the Welsh Ministers". Or it may include a general definition of "regulations" as "regulations made by the Welsh Ministers".

(4) It is sometimes convenient to use passive wording to confer a power to make regulations, for example by requiring a person to make an application in a form "specified in regulations". But take care with this approach. It may give the impression that regulations have to be made, which will be unhelpful if that is not the intention. And it can sometimes create doubt about whether the provision is conferring a new regulation-making power or is instead referring to regulations made under another power.

(5) To avoid repeating references to regulations, it is also possible to refer to things being "prescribed" and then define this in an interpretation provision as meaning "prescribed in regulations made by the Welsh Ministers". But it is generally better to avoid this approach, as terms like "prescribed form" are artificial and liable to confuse readers.

9.4 Describing what regulations will do: "prescribe", "provide" etc.

(1) When describing what regulations will do, it is common for Acts to confer powers to "prescribe" something or "make provision" for or about something. The main advantage of these generic phrases is that they leave some flexibility about how the regulations will deal with an issue. However, they can appear legalistic, and they may involve deferring consideration of what kind of provision the regulations will actually make.

(2) It is often possible to use more precise language which conveys the intention more directly, and if a more precise formulation can be identified it should normally be used. For example, an Act could say that regulations may "enable" or "require" things to be done, may "set" fees or "specify" qualifications, may "make" or "create" exceptions, and so on. Powers expressed in this way will generally be clearer and have a more immediate impact than powers to "prescribe" or "make provision".

(3) Always consider whether the words "make provision" can be omitted. For example, a power for regulations to "make provision requiring reports" could become a power to "require reports" without losing anything. If the reference to making provision cannot be omitted entirely, consider whether it can be replaced with the shorter "provide".

Powers to make particular types of provision

9.5 Powers to make different provision for different purposes and cases

(1) It is very common for Assembly Acts to spell out that powers to make subordinate legislation may be exercised to make different provision "for different purposes", or sometimes "for different purposes and different cases".

(2) Consider whether an express power to make different provision for different cases is actually needed. If regulations can apply to a range of cases that are materially different, they may well need to treat those cases differently to achieve their purpose. It may therefore be easy to infer that a power to make different provision is intended without express provision. Consider whether there is anything in the context that would make this a surprising conclusion.

(3) If an express power to make differential provision is needed, a power to make different provision "for different purposes" seems wider and more flexible than a power to make different provision "for different cases". Referring to "different purposes" would appear to allow regulations to include not only provisions that are intended to achieve the same policy objective in different situations, but also provisions which have a number of different objectives.

(4) If the situations in which a power might be exercised differently are known, consider being more specific about them. It might be more helpful to say that a power to make regulations about schools may be exercised differently in relation to different types of school than to rely on a generic reference to different cases or purposes.

(5) If there is a power to make different provision for different purposes or different cases, it is unlikely that anything will be gained by also referring to different "circumstances" or "descriptions of case". If the regulations may need to deal with an individual case as well as being able to make more general provision about categories of case, spell that out as clearly as possible.

9.6 Powers to make different provision for different geographical areas

(1) People would normally expect the law to be the same throughout Wales. If the policy is that regulations should be able to make different provision for different parts of Wales (such as different local authority areas), include an express power to make different provision "for different areas".

(2) Avoid formulations that imply that making different provision for different areas is just an aspect of making different provision for different purposes. In particular, do **not** say "for different purposes (including different areas)".

9.7 Non-exercise of powers

(1) It is not generally necessary to spell out that powers to make subordinate legislation do not have to be exercised to their full extent. If there is a power to make regulations rather than a duty, Ministers might choose not to exercise the power at all, so there should not usually be any expectation that it will be exercised in relation to all of the cases within its scope.

(2) If anything is needed, a power to make different provision for different purposes may be sufficient to indicate that no provision might be made for some cases.

9.8 Powers to make consequential and transitional provision etc.

(1) Powers for subordinate legislation to include any of the following types of ancillary provision should be conferred expressly. This may be done once in a general provision of the Act, or separately in relation to each power.

"Consequential provision"

(2) This is provision which follows as a result of the main provisions of an Act or set of regulations, such as a consequential amendment to another enactment to ensure that it continues to work correctly following changes made by the Act or regulations.

"Incidental" or "supplementary" provision

(3) It is common to confer powers to make both incidental and supplementary provision, although the two types of provision are similar. They will be provisions dealing with a subordinate incident of the main provisions, or adding something to the main provisions, in order to fill in details and make the main provisions work.

(4) There is no obvious difference in meaning between "supplementary" and "supplemental" in English, and both are expressed as *"atodol"* in Welsh. "Supplementary" should be preferred, as it is probably the more usual formulation.

"Transitional provision"

(5) This is provision to effect an orderly transition from one legal regime to another, such as provision spelling out how legislation applies in relation to applications or proceedings which have begun under a previous regime but which have not been completed when the new legislation comes into force.

"Transitory provision"

(6) This is temporary provision that will expire on a particular day or on the occurrence of a particular event. For example, the Government of Wales Act 2006 made transitory provision for references to the Supreme Court in that Act to have effect as references to the Judicial Committee of the Privy Council until the legislation establishing the Supreme Court came into force. A transitory provision may be a transitional provision but need not be.

"Saving provision"

(7) This is a provision that preserves the operation of an existing piece of legislation or rule of law, for limited purposes, despite its amendment or repeal. The provision can do this temporarily or permanently, and for transitional or other purposes. A saving might therefore be a transitional or transitory provision but need not be so.

(8) Note that section 34 of the Legislation (Wales) Act 2019 provides some general savings for things done before the repeal of an enactment comes into force, which will have effect unless express provision is made to the contrary or the context requires otherwise.

9.9 Powers to amend primary legislation

(1) If it is intended that subordinate legislation made under an Act should be able to amend primary legislation, the Act must include clear provision to that effect.

(2) One technique is to provide that regulations under the Act may "amend, repeal or revoke an enactment". Schedule 1 to the Legislation (Wales) Act 2019 contains a general definition of "enactment" which includes Acts and Measures of the Assembly and Acts of the UK Parliament[41]. A power to amend enactments will therefore permit amendments to any primary legislation that forms part of the law of England and Wales, subject to the restrictions on modifying certain Acts imposed by Schedule 7B to the Government of Wales Act 2006.

(3) If the policy is that regulations should be able to amend the Act under which they are made, that should be stated clearly in the Act, for example by providing that the regulations may amend "any enactment (including this Act)" or "this Act or any other enactment".

41 Schedule 1 to the Interpretation Act 1978 does not define "enactment" exhaustively, but provides that certain types of legislation are included or excluded. Legislation to which the 1978 Act applies often defines "enactment" for the purposes of references in that legislation.

(4) It may be appropriate to confer a power to amend enactments that become law after the Act conferring the power is enacted. This may be useful if there is likely to be a long lead-in time before the Act is brought into force, or if it is expected that other legislation on a related subject will be enacted after the Act is passed but before the regulations are made.

(5) A power to amend future legislation should be conferred by express provision unless the context makes it clear that future enactments are covered. The usual formulation is to refer to an enactment "(whenever enacted or made)".

9.10 Powers to amend retained direct EU legislation

(1) The definition of "enactment" in Schedule 1 to the Legislation (Wales) Act 2019 includes retained direct EU legislation. Where an Assembly Bill contains a power to amend enactments, the power will therefore include amending EU legislation that is retained in domestic law on and after exit day, and a separate power to amend retained direct EU legislation for the same purpose will not be needed.

(2) However, an Assembly Act cannot confer powers to make modifications of retained EU law that breach the restriction in section 109A of the Government of Wales Act 2006, and section 80(8) of the 2006 Act puts a similar limitation on any powers of the Welsh Ministers to make subordinate legislation modifying retained EU law.[42]

(3) If the policy is that subordinate legislation made under an Assembly Act should be able to modify retained direct EU legislation, it will also be necessary to consider the powers conferred by the European Union (Withdrawal) Act 2018 when deciding what provision (if any) should be made.

(4) Even if an Act does not provide expressly that subordinate legislation made under it can modify retained direct EU legislation, paragraphs 10 and 11 of Schedule 8 to the 2018 Act give some very limited powers to do so. They provide that powers to make subordinate legislation conferred on or after 26 June 2018 (the day the 2018 Act was passed) may in certain circumstances be exercised to modify retained direct EU legislation "so far as applicable and unless the contrary intention appears".

(5) Paragraph 12 of Schedule 8 to the 2018 Act provides that these powers do not apply so far as section 80(8) of the Government of Wales Act 2006 applies, so the restrictions in the 2006 Act will still need to be considered. Paragraph 12 also provides that these powers do not prevent the conferral of wider powers.

9.11 Other powers that should be conferred expressly

(1) Where it is intended that subordinate legislation made under an Assembly Act should be able to include any of the following types of provision, the Act should contain clear wording to that effect.

Power to sub-delegate

(2) If an Act provides that a matter is to be specified in regulations, it is generally assumed that the regulations must specify the matter themselves and cannot provide for it to be specified in another way. If the intention is that regulations should be able to delegate the power to deal with matters that would otherwise be dealt with in the regulations, the power to delegate should therefore be conferred expressly.

42 Sections 109A(1) and 80(8) prevent modifications "of a description specified in regulations made by a Minister of the Crown". Sections 109A and 80 set out the procedure for making the regulations, as well as placing limits on the periods during which the regulations may be made and for which they may remain in force. At the time of writing, no regulations have been made under either section.

Power to legislate retrospectively

(3) A power to make regulations will not be interpreted as including the power to legislate with retrospective effect unless that is clearly intended, so express provision should generally be included.

Power to create criminal offences and penalties

(4) Express provision should be included if a power to make regulations is intended to include a power to create criminal offences (including fixed penalties and other civil sanctions in respect of criminal offences) or similar penalties.

Statutory Instrument procedure

9.12 Attracting section 1 of the Statutory Instruments Act 1946

(1) Where an Act gives the Welsh Ministers a power to make regulations or to bring provisions of the Act into force by order, it should also make provision to attract the rules about publication and procedure in the Statutory Instruments Act 1946[43].

(2) Section 1(1A) of the 1946 Act provides that those rules apply where:

- an Act confers a power to make, confirm or approve subordinate legislation on the Welsh Ministers (which includes the First Minister and the Counsel General by virtue of section 11A(8) of the 1946 Act), and
- the power is "expressed to be exercisable by statutory instrument".

(3) To attract section 1 of the 1946 Act, it is necessary to provide for the subordinate legislation in question to be made by statutory instrument. In relation to regulations, it is sufficient to say:

> A power [of the Welsh Ministers] to make regulations under this Act is exercisable by statutory instrument.

(4) It is sometimes neater to roll up the wording that attracts section 1 with the power itself, for example where there is a simple power and everything can be dealt with in one subsection. This technique is common for powers to bring an Act into force (which refer to a day appointed by the Welsh Ministers in an order made by statutory instrument: see paragraph 10.8).

(5) If an Act contains a number of powers to be exercised by statutory instrument, it is more usual to deal with this once at the end, rather than repeating the same thing in different places.

9.13 Negative resolution procedure

(1) Use the following wording to apply the negative procedure to an instrument:

> A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(2) To be consistent with section 5 of the 1946 Act, it is the statutory instrument containing the regulations, rather than the regulations themselves, that is said to be subject to annulment.

43 Those rules are not always applied to other types of subordinate legislation made by the Welsh Ministers. For example, powers to make directions, schemes and purely administrative orders are not normally exercisable by statutory instrument.

9.14 Affirmative resolution procedure

(1) Use the following wording to apply the draft affirmative procedure:

> A statutory instrument containing regulations under this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

(2) As with negative instruments, the required approval should relate to a draft of the statutory instrument containing the regulations, rather than a draft of the regulations themselves. This is to be consistent with the wording of section 6 of the 1946 Act.

9.15 Location of procedural provision

(1) In some Acts containing very few powers to make subordinate legislation, each provision which confers a power applies any necessary Assembly procedure.

(2) But where an Act confers a larger number of powers to make subordinate legislation, it is more common to deal with procedural matters in general provisions at the back of the Act. This will probably be more helpful to readers of the Act once it has been passed, on the basis that these provisions are dealing with technical matters that are unlikely to be of interest to most readers.

9.16 No need for provision about combined instruments

(1) Where a statutory instrument made by the Welsh Ministers contains provisions that would otherwise attract different Assembly procedures, section 40 of the Legislation (Wales) Act 2019 provides that the instrument is subject to the stricter of those procedures. For example, if an instrument contains some provisions that would attract the draft affirmative procedure and others that would normally attract the negative procedure, the instrument is subject only to the affirmative procedure.

(2) In the past, provisions about Assembly procedure tried to cover all of the ways in which subordinate legislation under an Act might be combined in one statutory instrument. To avoid any gaps, an Act might have applied the affirmative procedure to an instrument containing regulations under certain powers "(whether alone or with other provision)" and the negative procedure to any other instrument containing regulations under the Act. Or it might have applied the negative procedure to a statutory instrument containing "only" regulations made under certain powers, and the affirmative procedure to any other statutory instrument containing regulations under the Act.

(3) Section 40 of the 2019 Act removes the need to draft provisions about Assembly procedure for statutory instruments in this way. Those provisions need only state the procedures for instruments containing regulations under each power. For example:

> ( ) A statutory instrument containing regulations under section 1, 2 or 3 may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.
>
> ( ) A statutory instrument containing regulations under section 4, 5 or 6 is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Directions

9.17 Powers to give directions

(1) Legislation may give the Welsh Ministers (and sometimes other public authorities) powers to issue directions for a variety of purposes, such as requiring a person to take or avoid certain steps, or conferring an exemption from a statutory requirement. The power may be expressed as a power to "direct" or "give a direction". It may also be incorporated in a requirement to do something (such as preparing accounts) "in accordance with directions given by the Welsh Ministers".

(2) The intention is usually that a power to issue directions will include powers to vary and withdraw them. It is not normally necessary to confer these powers expressly, because section 20 of the Legislation (Wales) Act 2019 provides general powers to vary and withdraw directions[44]. But consider whether the context of your legislation would require a different interpretation, so that express powers are needed. And if the intention is that the person who issues a direction should **not** be able to vary or withdraw it, consider whether express provision is needed to make that clear.

(3) Express provision may be needed to deal with other matters relating to directions. For example, if the policy is that a direction must be given in writing there should be an express requirement to that effect.

(4) A power to direct that something must or must not be done should be accompanied by an express duty to comply with the direction, whether the recipient is a public authority or a private individual or body. Further provision may be needed about the consequences of non-compliance or about the methods for enforcing directions (such as by a court order made on the application of a specified public authority).

44 There is no equivalent provision in the Interpretation Act 1978. It may be necessary to make express provision about variation and withdrawal when inserting a power to give directions into legislation to which that Act applies.

Chapter 10: General provisions of Assembly Acts

Introduction

10.1 Overview of Chapter

(1) This Chapter is about the provisions of a general and technical nature that appear towards the end of an Act.

(2) These provisions always include provisions about the coming into force of the Act and its short title. They also commonly include provisions about powers to make regulations (including Assembly procedure) and interpretation, and they may deal with other matters such as methods of serving documents and Crown application.

(3) Guidance about some matters that are often covered in general provisions is set out in earlier Chapters of these guidelines, in particular:

- Chapter 4 (definitions);
- Chapter 7 (amendments and repeals);
- Chapter 9 (powers to make subordinate legislation and give directions).

10.2 Arrangement of general provisions

(1) If the general provisions of an Act are grouped in a single Part or under a single italic heading, the heading should be "General" and not "Final provisions", "Supplementary" or "Miscellaneous".

(2) The following running order should be used as a starting point for the provisions (although there may be good reasons to depart from it in particular cases):

General provisions about offences (bodies corporate, unincorporated associations)

Regulations (including Assembly procedure)

Directions

Notices/service of documents

Interpretation

Index of defined expressions

Amendments, consequential and transitional provisions and savings, repeals

Crown application

Coming into force

Short title

(3) If there is a power to make consequential and transitional provision by regulations, there are two common approaches, either of which is acceptable. One is to include the power earlier in the running order, immediately before the section about regulations. The other is to include it later on, either in place of or immediately after a provision introducing a Schedule of consequential and transitional provisions.

(4) The recommended running order is based on the following assumptions:

(a) matters of substance (e.g. offences) should come before procedural matters;

(b) provisions relating to subordinate legislation and those relating to other documents should be grouped together;

(c) there is an expectation that the last two sections will deal with the coming into force of the Act followed by the short title.

Consequential and transitional provision etc.

10.3 Schedules of consequential etc. provisions and powers to make further provision

(1) Where a Bill contains a large number of consequential and transitional provisions or amendments and repeals, it is common to set them out in Schedules. If there is a single section introducing separate Schedules containing (1) minor and consequential amendments, (2) transitional provisions and savings, and (3) repeals, the section should deal with those topics in that order (but see paragraph 7.6(7)).

(2) The consequential amendments, transitional provisions and repeals that are needed should be included in the Bill itself wherever possible. Exceptionally a Bill may instead confer free-standing powers for the Welsh Ministers to make all of the necessary provisions in regulations. And in some cases a Bill may set out some provisions on its face, but also confer powers to make further provision in regulations.[45]

(3) Where powers to make any of these types of provision in regulations are proposed, it is important to obtain instructions about the purposes for which further provision may be needed. If the policy is that the regulations should be able to amend or repeal primary legislation, the power to do so should be spelled out.

(4) See Chapter 9 for guidance on the meaning of powers to make consequential, incidental, supplementary, transitional, transitory and saving provision, and on drafting powers to amend primary legislation.

Crown application

10.4 Presumption that Assembly Acts bind the Crown

(1) The general rule of the common law is that statutes do not bind the Crown unless they do so expressly or by necessary implication. However, section 28(1) of the Legislation (Wales) Act 2019 reverses this presumption for Assembly Acts that receive Royal Assent on or after 1 January 2020, by providing that they bind the Crown unless they make express provision to the contrary.

(2) Section 28(1) of the 2019 Act reflects a general policy that wherever possible restraints and obligations imposed by Assembly Acts should apply to the Crown in the same way that they apply to everyone else. It means that Assembly Acts do not need to provide that they bind the Crown.

(3) There may sometimes be exceptions to the general rule that Acts should bind the Crown. If an Act contains provisions which would otherwise affect the Crown, but the policy is that they should not apply to the Crown, the Act will need to provide expressly that the Crown is not bound. The standard wording for this is as follows:

> This [Act][Part] does not bind the Crown

(4) There is no need for an Act to provide that it does not bind the Crown if it is clearly not relevant to the Crown, for example because it applies only to local authorities or makes provision about things that cannot be done by the Crown.

(5) Section 28(3) of the 2019 Act provides that an Assembly Act does not make the Crown criminally liable, but also makes clear that this does not prevent persons in the service of the Crown being liable. Like the general rule in section 28(1), this is subject to any express provision to the contrary in the relevant Assembly Act.

(6) The context of a particular Act may require further exceptions or modifications to the general rule that Assembly Acts bind the Crown. Other types of provision that might be included in a section about Crown application include:

45 Chapter 7 of the Legislation Handbook on Assembly Bills discusses the implications of each of these approaches.

(a) provision that the Act does not affect the Queen in her private capacity or does not apply to the Crown in some other capacity (see section 187A(2) of the Tax Collection and Management (Wales) Act 2016 for an example);

(b) a requirement to obtain the consent of an "appropriate authority" before a power to enter or acquire land can be exercised in relation to Crown land (see section 21 of the Environment (Wales) Act 2016, which uses common definitions of "Crown land" and "appropriate authority";

(c) a power for the High Court to declare that a contravention of the Act by the Crown is unlawful (section 29(2) of the Renting Homes (Fees etc.) (Wales) Act 2019 contains a simple example; sometimes it is also provided that an application for a declaration must be made by a specified public authority).

Coming into force

10.5 "Coming into force" not "commencement"

(1) An Assembly Act should contain a section dealing comprehensively with how and when all of its provisions come into force.

(2) The heading of the section should be "Coming into force" and **not** "Commencement".

(3) A reference to the time when a provision begins to have legal effect should be a reference to the "coming into force" of the provision or the time when it "comes into force" (or "came into force") rather than to its "commencement".

10.6 Provisions coming into force on the day after Royal Assent

(1) Where the intention is that certain provisions of an Act should come into force as soon as possible after Royal Assent, those provisions should normally come into force at the beginning of the day after the day on which the Act receives Royal Assent, rather than at the beginning of the day of Royal Assent (which would involve an element of retrospectivity).

(2) This policy matches the default position that would apply under section 30 of the Legislation (Wales) Act 2019 if an Act failed to make provision about when a provision came into force. However, section 30 should not be regarded as justifying silence about when a provision comes into force. The provisions that are to come into force on the day after Royal Assent should be identified expressly.

(3) The provisions coming into force the day after Royal Assent always include the sections about the coming into force of the Act and the short title. In addition, they often include overview provisions, general provisions about regulations and interpretation, and powers to make consequential amendments.

(4) The wording used to bring the provisions into force should refer to them coming into force "on" the day in question, so that they come into force at the beginning of that day by virtue of section 29 of the 2019 Act. (This is an exception to the general recommendation in Chapter 8 against providing for something to begin "on" a day.)

(5) The recommended standard form of words to bring provisions into force at the beginning of the day after Royal Assent is:

> Sections X and Y come into force on the day after the day on which this Act receives Royal Assent.

10.7 Provisions coming into force at end of fixed period

(1) The recommended standard form of words to bring provisions into force at the end of a fixed period (such as two months) is:

> Sections X and Y come into force at the end of the period of [two months] beginning with the day on which this Act receives Royal Assent.

(2) Where the provision in question confers a power or imposes a duty, section 16 of the Legislation (Wales) Act 2019 enables the power or duty to be exercised for certain purposes before the provision comes into force.

10.8 Provisions coming into force by order

(1) Where an Act does not specify the day on which a provision is to come into force, it will normally give the Welsh Ministers the power to appoint that day.

(2) A power for the Welsh Ministers to bring provisions into force should take the form of a power to make an order by statutory instrument. (This is an exception to the general rule that powers to make subordinate legislation by statutory instrument should be expressed as powers to make regulations: see also paragraph 9.2.)

(3) In general it is clearer to say that a provision comes into force on a day appointed by Ministers in an order, rather than "in accordance with provision made by an order". The latter form of words may leave doubt about whether any further power (e.g. to make transitional provision) is being conferred. If additional powers are wanted, they should be conferred expressly.

(4) An appointed day provision should be a positive statement about when the provisions come into force, along the following lines:

> The [other] provisions of this Act come into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

(5) Avoid using a negative formulation, such as a statement that provisions "do not come into force until" a day appointed by the Welsh Ministers by order.

10.9 Provisions coming into force by order: supplementary provisions

(1) Where there is a power to bring provisions of an Assembly Act into force by order, section 31 of the Legislation (Wales) Act 2019 means that the power can be exercised to bring provisions into force on different days for different purposes. There should therefore be no need for an Act to make express provision for differential commencement.

(2) However, the "coming into force" section will need to deal separately with everything else relating to the power to bring provisions into force by order. A general section of the Act about regulations will not apply to such an order (and it should not apply, because it can be unclear how a general provision about subordinate legislation works for orders bringing provisions into force).

(3) In particular, the coming into force section should make express provision for any power that is required to make transitional, transitory or saving provision. (See Chapter 9 for guidance on the meaning of these terms.) Where powers to make these kinds of provision are needed, the standard form of words is:

> An order under subsection ( ) may make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

(4) Although the section should provide for an order bringing provisions into force to be made by statutory instrument, such an order is not normally subject to any Assembly procedure. In passing the Bill, the Assembly has already approved the provisions that are to be brought into force.

(5) Note that section 16 of the Legislation (Wales) Act 2019, which enables certain powers and duties to be exercised before the provisions conferring or imposing them are in force, does not apply where a provision is to be brought into force by order.

Other provisions

10.10 Extent provision not required

(1) The United Kingdom has three legal jurisdictions: England and Wales, Scotland, and Northern Ireland. An extent provision in an Act of the UK Parliament identifies the jurisdiction or jurisdictions whose law is being changed by the Act. It needs to do so because the UK Parliament can legislate for all three jurisdictions.

(2) Wales forms part of the unified jurisdiction of England and Wales. The provisions of an Assembly Act cannot extend to any other jurisdiction. As a result there is no need to include an extent provision in an Assembly Act telling the reader that it forms part of the law of England and Wales (and does not form part of the law of Scotland or Northern Ireland). Such a provision would itself extend only to England and Wales.

(3) Although the provisions of an Assembly Act form part of the law of England and Wales, they can generally apply only to things done in Wales.[46] The territorial application of provisions should be made clear in the Act, but this should not normally be left to be dealt with in the general provisions at the end of the Act.

(4) See paragraph 7.28 for guidance on dealing with issues of application and extent in amendments to other legislation.

10.11 Short title

(1) Provision for a short title is required by the Presiding Officer's Determination on the Proper Form for Public Bills. For consistency, the following formulation should always be used to introduce the short title:

> The short title of this Act is…

(2) The short title of a Bill should:

(a) be short so that it provides a convenient citation label for future users of the legislation;

(b) encompass all that is going on in the Bill;

(c) place the Bill clearly within any closely related corpus of law (for example, environmental law) and be consistent with previous titles.

(3) It is particularly important that the short title gives an accurate description of the Bill's contents. The Presiding Officer's Determination states that the short title "should be in factual, neutral terms and must not contain material intended to promote or justify the policy behind the Bill, or exaggerate its effect".

(4) The short title should be in the format "[Description] (Wales) Act [year]". But if the description of the subject-matter already includes "Wales", for example because the Bill is about a public body whose name includes that word, it should not be repeated in brackets.

(5) On introduction, the year given in the short title of a Bill should be the year in which it is expected to receive Royal Assent. If Royal Assent is in fact given in a different year, printing changes will be needed so that the published Act gives the correct year.

46 Government of Wales Act 2006, section 108A(2)(b), (3) to (5) and (7).

Annex: Further reading

Publications on legal drafting and statutory interpretation

Asprey, *Plain Language for Lawyers* (4th edition, Federation Press, 2010)

Bailey and Norbury, *Bennion on Statutory Interpretation* (7th edition, LexisNexis, 2017 and Supplement to the 7th edition, 2019)

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Publications of the Welsh Government and National Assembly for Wales

Welsh Government, *Legislation Handbook on Assembly Bills* (2019)
https://gov.wales/legislation-handbook-assembly-bills

Welsh Government,
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Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

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Mick Antoniw AM
Chair,
Constitutional and Legislative Affairs Committee
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11 November 2019

Dear Mick,

UK regulations relating to exiting the European Union

Thank you for your letter dated 18 October regarding EU Exit statutory instruments and points raised by the Committee, which are addressed below.

I can confirm that all disputes over devolved matters with the UK Government, continue to be addressed in the same way. In all instances the Minister for Environment, Energy and Rural Affairs has written to Defra Ministers setting out our concerns with discussions ongoing. In terms of the two statutory instruments you have cited, I can assure you they do in fact achieve our overarching policy objectives of securing and maintaining the effective functioning of agricultural markets in the UK.

You have also requested additional information on the impact on legislative and executive competence in relation to two statutory instruments. This information will be provided to the Clerk of your Committee by officials as soon as possible.

In relation the final point in your letter, it is correct that where SIs have created concurrent and/or so called "concurrent plus" functions, there is a potential impact on the legislative competence of the Assembly. This is because there is a risk that the removal of such functions in an Assembly Act could engage the consent requirements in Schedule 7B to the Government of Wales Act 2006. In consequence of the identified risk we have engaged with the UK Government and reached an agreement in principle that the issue will be addressed by way of amendments to legislative competence in a s.109 Order; specifically, amendments to the consent requirements in paragraphs 8 and 11 of Schedule 7B. The agreement for the carve out is stated to be an agreement in principle because it now comes with the caveat that this agreement is subject to the views of any new Ministers in light of the scheduled election.

Prior to the dissolution of Parliament the Office of the Secretary of State for Wales shared a draft of the Order with us and we have provided our detailed comments on that draft. It

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included a carve out from the consent requirements as agreed although we await their response to the specific points we have raised.

Finally, on the issue of timing, we do not currently have a clear indication of when this Order will be made as certain articles within it are contingent on when the UK exits the EU and under what circumstances. Until the position on this becomes clear, there will be no settled time table for this Order. A s.109 Order is an Order in Council and pursuant to the provisions of s.109, must be approved by each House of Parliament and the Assembly before a recommendation is made to the Queen to make the Order. Furthermore, Standing Order 25 requires that a proposed Order is laid before the Assembly to allow for an appropriate committee to report on it before the draft Order is then laid for approval. There will therefore, be opportunities for scrutiny of this Order by the Assembly before it is made.

I am copying this letter to the Counsel General and Brexit Minister.

Yours sincerely,

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

Cynulliad Cenedlaethol Cymru
Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

National Assembly for Wales
Constitutional and Legislative Affairs Committee

Rebecca Evans AM
Minister for Finance and Trefnydd

18 October 2019

Dear Rebecca

UK regulations relating to exiting the European Union

The Constitutional and Legislative Affairs Committee considered a number of Welsh Government written statements, issued under Standing Order 30C, for the following regulations at its meeting on 16 September 2019:

- The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019
- The Health and Safety (Amendment) (EU Exit) Regulations 2018
- The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019
- The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019
- The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

There are a number of overlapping concerns which we wish to draw to your attention.

Dispute over devolved matters

The written statement for The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 indicates that there has been disagreement with the UK Government as to whether the Common Organisation of the Markets (CMO) and Common Agricultural Policy (CAP) are devolved or reserved, meaning the UK Government did not ask for the consent of the Welsh Government. A similar dispute is referenced in the written statement for The Common Organisation of the Markets in Agricultural Products (Transitional Arrangements etc.) (Amendment) (EU Exit) Regulations 2019.

However, we noted that the Welsh Government's subsequent handling of each of the Regulations appears to be different. With regards to the former, the written statement indicates that, despite the dispute over whether consent was needed, the Welsh Government was content with the effect of the Regulations. With the latter, we noted from the statement that Welsh Government initiated correspondence with the UK

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Government informing it that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence. We would welcome clarification on why different actions were taken. We would also be grateful if you could provide details of the UK Government's response to the correspondence.

Impact on legislative and/or executive competence

The second matter which we wish to highlight relates to the impact that regulations may have on legislative and/or executive competence. We are concerned that the written statements for both The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019 and The Health and Safety (Amendment) (EU Exit) Regulations 2018 do not specify which legislative powers of the National Assembly or executive powers of the Welsh Ministers are affected by the regulations.

As you will be aware, Standing Order 30C.3(ii) requires the written statement to "specify any impact the statutory instrument may have on the Assembly's legislative competence and/or the Welsh Minister's executive competence". We would therefore be grateful if you would clarify which powers are affected in each case.

Impact on legislative and/or executive competence – concurrent functions

The final matter we wish to draw to your attention relates to the potential negative impact on the National Assembly's legislative competence by the exercise of concurrent functions.

We have, over the past year, regularly raised the issue of concurrent functions impacting negatively on the National Assembly's legislative powers (by virtue of engaging paragraph 11 of Schedule 7B to the Government of Wales Act 2006). This matter is relevant to: The Agriculture (Miscellaneous Amendments) (EU Exit) Regulations 2019, The Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments etc.) (EU Exit) (No. 2) Regulations 2019, and The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019.

However, there are differences in how the respective written statements comment on the issue. In respect of the latter mentioned regulations, the written statement states that Welsh Government officials are working with the Office of the Secretary of State for Wales with a view to amending Schedule 7B to the *Government of Wales Act 2006* by an Order under section 109A of that Act. This information is not provided in the written statements for the first and second sets of regulations mentioned above. The Counsel General's letter to us, dated 9 April 2019, stated that a section 109 Order was being considered by the Welsh and UK Governments. In evidence to us on 16 September, the Counsel General said he had not received a draft of the section 109 Order, and suggested there was a possibility that the UK Government was considering whether the Order should tackle issues identified to date or whether it would address broad principles.

We would be grateful for clarification on whether the issues identified in all three above-mentioned regulations will be addressed in a forthcoming section 109 Order. We would also welcome an update on the position and timing of a forthcoming section 109 Order (or Orders), including whether any such Order(s) will address only the specific issues raised to date or whether it/they will make broader changes to the test set out in paragraph 11 of Schedule 7B.

I am copying this letter to Jeremy Miles AM, the Counsel General.

Yours sincerely

Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

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Agenda Item 8

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