

Huw Irranca–Davies MS

Chair of the Legislation, Justice and Constitution Committee

22 September 2021

The Accessibility of Welsh Law

Dear Huw

The Counsel General wrote to me during the summer to set out his intention to take steps during this Senedd term to improve the accessibility of Welsh law. He included a paper which had been prepared by the Office of the Legislative Counsel entitled ‘Proposal to modernise the structure and presentation of Welsh law’. The Counsel General’s letter of 24 June 2021 and the accompanying paper are attached.

As Llywydd, Standing Order 26.3 makes provision for me to determine the proper form of Senedd Bills. To help inform my consideration of the next determination, I would like to seek views on the question of how best to improve the accessibility of Welsh Law, including the ideas set out in the OLC paper, from those who engage in the legislative scrutiny process and those who will use the final legislation. At its meeting last week the Business Committee agreed that the Legislation, Justice and Constitution Committee should be invited to take forward this task.

I would be grateful if your Committee could undertake a short inquiry into this issue, and to report on your conclusions. The Business Committee has not set a deadline for this work, but it would be helpful for the report to be available as early in this term as possible to inform my determination and future drafting of the legislative programme. An early indication of the timetable for the Committee’s inquiry would be welcome.

Yours sincerely

A handwritten signature in blue ink that reads "Elin Jones". The signature is written in a cursive style with a large initial 'E'.

Elin Jones MS

Y Llywydd and Chair of the Business Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution



Llywodraeth Cymru
Welsh Government

Elin Jones AS/MS
Llywydd Senedd Cymru
Comisiwn y Senedd
Bae Caerdydd

24 June 2021

Hygyrchedd Cyfraith Cymru – Accessibility of Welsh law

As we start a new Senedd term and prepare to adopt a new legislation drafting and management system, I would like to suggest some improvements to the way Welsh legislation is presented. I understand that a number of innovations have been discussed on occasions over the years, but despite nobody raising any significant objections to them, they have not as yet been implemented.

However, the passing by the Senedd of the Legislation (Wales) Act 2019, and the obligation on the Government under Part 1 to promote a programme of activities to make Welsh law more accessible, has inspired me to give these issues more thought. The Act will also, I hope, provide some more impetus to actually effect change on this occasion.

As the attached paper prepared by the Office of the Legislative Counsel explains, the form and structure of Acts of the Senedd is based largely on the form and structure of Acts of the UK Parliament, which in turn is the product of hundreds of years of history. I believe we should think again about how Welsh legislation is presented, basing this not on parliamentary procedure, but on the needs of the users of legislation. Our focus, first and foremost, should be on making legislation easier to read and understand.

So I would be grateful if you could consider the attached proposal, which I would of course be very happy to discuss.

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



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Proposal to modernise the structure and presentation of Welsh law

Context

The way in which Welsh legislation is presented is based in large part on the way UK legislation is presented. And, in turn, the way UK legislation is presented is the product of hundreds of years of history. The form, structure and language of legislation has developed incrementally over many years, derived mainly from Parliamentary procedure rather than consideration of how it could be made easier to read and understand. Little thought has been given to the best and most accessible way to present and publish legislation.

“Short” titles and “long” titles

Perhaps the most obvious manifestation of the impact of history is the peculiar notion of having two titles to an Act. Historically there was no real title to an Act, rather legislation was organised by reference to its series number and date. Eventually a title of sorts emerged, but this was an often lengthy description of the content of the Act in question – what we now refer to as the “long” title. The “short” title to an Act is a relatively modern innovation, a shorthand used to refer to legislation more easily, in particular in court (hence saying that an Act “may be cited as [whatever the short title is]”).

We believe this distinction between the short and long title is an unnecessary complication that should not continue. Rather each Act should simply have one title (that which most people, no doubt, actually think the title is – the short title to the Act).

“Overview” provisions

There is merit in having more descriptive text at the beginning of an Act so that the reader can quickly understand what it contains, but having a long title is not the best way of doing this. The long title is flawed both because of it being another “title” and because of the way it is set out as one long sentence. A short overview to an Act – drafted and structured in accordance with modern practice – would be a much more effective way of helping the reader understand what follows.

We have regularly incorporated overview provisions in Welsh Acts for this reason. These have generally been well received and in the main they have served their purpose. It is vital, however, that they are kept short, which means that in the case of long Acts, we consider adopting an overview for each Part of an Act – something that enables the main overview to be kept very succinct. Also essential is that the overview is just that, and does not contain substantive legal provisions.

Recently we have used overviews considerably less. The main reason for this is that the existence of the long title, in particular in a short Act, makes the overview appear like unnecessary repetition. We are conscious also that more traditional parliamentary counsel oppose all extraneous material in legislation for two reasons – first, because adding an overview as a section to an Act will generally

mean that users of legislation (including, importantly, the courts) may assume that it has substantive effect as law (in other words that it is doing something), and second because of the risk of the provision “going toxic” if it fails to be amended for consistency as other amendments are made to a Bill.

For these reasons we propose that overviews should have a status similar to headings. They would be part of a Bill but as their purpose is merely to help people use the document rather than to effect a change in the law, they would not be amendable during the passage of a Bill (other than, where necessary, as printing changes between Stages of scrutiny. Also like headings they could, however, be amended later by subsequent legislation (once the Act in question is passed).

Long titles have developed a specific function in the Westminster Parliament because their content is the most important provision for determining the scope of a Bill. Removing long titles would not, however, lead to a problem in this respect in the Senedd. This is partly because (sensibly) the test used in the Senedd is a broader one based on whether an amendment is “relevant”, taking into account the content of the Bill, and partly because the long title would in any event be replaced by a more modern and easier to understand overview (which would help determine relevance).

Words of enactment

Another product of history is the specific words of enactment used at the beginning of a Welsh Bill. This mimics the “enacting formula” adopted in Westminster from the 15th century onwards. UK Bills have 5 different enacting formulas depending on their content and the process adopted for passing the Bill, but in the words of Halsbury’s Laws: “The enacting formula is now purely formal”. In Wales, there is only one formulation and those words are also purely formal as they aren’t necessary from a legal perspective. The wording used seeks to convey the fact that in order to become law, an Act must both be passed by the Senedd and receive the assent of Her Majesty:

Having been passed by Senedd Cymru and having received the assent of Her Majesty, it is enacted as follows:

This wording isn’t straightforward and could be drafted in simpler terms (and avoiding the passive voice), for example:

Senedd Cymru, with the assent of Her Majesty, enacts as follows:

Our preference, however, would be to omit these words entirely.

Scottish Bills do not contain words of enactment, rather they begin by providing more important information set out clearly (dates of passing and Royal Assent) as follows:

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 23rd March 2021 and received Royal Assent on 5th May 2021

Dates

Senedd Acts add the date of Royal Assent in square brackets (as is required by law) but they do not provide any further explanation. It is notable also that no reference is made in either case to the most important date, which is the date on which the Act takes effect. For the ultimate user of legislation, referring to the date in which an Act is passed and the date of Royal Assent, but not the date in which it takes legal effect, is likely to be confusing. So we suggest that something like this would be preferable:

Passed by Senedd Cymru: 23 March 2021
Coming into force: 6 May 2021

Royal Assent: 5 May 2021

Where the Act comes into force in stages or by Order reference could be made to the section which sets this out, as is done already in the case of Statutory Instruments.

Fonts

Although a decision was made in 2007 to adopt a different font in Welsh Bills to that used in the Westminster Parliament, the font chosen was a similar, traditional looking, “serif” font. Some people find it difficult to read serif fonts, because they distract the eyes and the brain from the overall shape of the letter – see link below:

https://reciteme.com/uploads/articles/accessible_fonts_guide.pdf

“Sans serif” means “without the decorative line” and we believe consideration should be given to adopting a “sans serif” font as it is more accessible and (as a secondary issue) looks more modern. It is now normal practice to use “sans serif” fonts, in particular on any material read on screen, which is important bearing in mind that in practice people no longer purchase paper copies of legislation and the vast majority of people read legislation online.

Navigation aids

We would also like to adopt the practice used in Scottish Acts (and partially in UK Acts) of including a header on the document that informs you which Part or Schedule you are in. This is a small and easy tool that helps people navigate legislation, which is helpful in particular where it is very long. Please see the example:

https://www.legislation.gov.uk/asp/2021/8/pdfs/asp_20210008_en.pdf

Example

An example of the existing layout for Senedd Bills is set out in Annex 1 and a possible alternative in Annex 2.

Statutory Instruments

Finally, thought is also being given to the way Statutory Instruments made by the Welsh Ministers are set out, in particular use of the dual column format which divides the page vertically. In our view this was the right approach 20 or years ago when we first began making Welsh subordinate legislation but in an age where nearly everyone reads legislation online, it is now an unnecessary and expensive complication in the publication process. Our intention is that it be replaced by a technological solution which enables the reader to easily consider both languages side by side on screen.

Swyddfa'r Cwnsleriaid Deddfwriaethol

ANNEX 1

Example of existing layout

Control of Horses (Wales) Act 2014

An Act of the National Assembly for Wales to make provision for and in connection with the taking of action in relation to horses which are in public places without lawful authority or which are on other land without consent. [27 January 2014]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

1 Overview

This Act makes provision for local authorities to seize, impound and dispose of horses which—

- (a) are in public places without lawful authority, or
- (b) are on other land without the consent of the occupier of the land.

2 Power of local authority to seize horses

- (1) A local authority may seize and impound a horse which is on any highway, or in any other public place, in the local authority's area if the local authority has reasonable grounds for believing that the horse is there without lawful authority.
- (2) A local authority may seize and impound a horse which is on any other land in the local authority's area if the local authority has reasonable grounds for believing—
 - (a) in the case of land of which the local authority is the occupier, that the horse is there without the local authority's consent, or
 - (b) in the case of other land in the local authority's area, that the horse is there without the consent of the occupier of the land and that the occupier consents to the local authority seizing and impounding it.

...

10 Commencement and short title

- (1) This Act comes into force on the day after the day on which it receives Royal Assent.
- (2) The short title of this Act is the Control of Horses (Wales) Act 2014.

ANNEX 2

Possible alternative layout

Control of Horses (Wales) Act 2014

Passed by Senedd Cymru: 10 December 2013

Royal Assent: 27 January 2014

Comes into force: 28 January 2014

Overview This Act makes provision for local authorities to seize, impound and dispose of horses which—

- (a) are in public places without lawful authority, or
- (b) are on other land without the consent of the occupier of the land.

1 Power of local authority to seize horses

- (1) A local authority may seize and impound a horse which is on any highway, or in any other public place, in the local authority's area if the local authority has reasonable grounds for believing that the horse is there without lawful authority.
- (2) A local authority may seize and impound a horse which is on any other land in the local authority's area if the local authority has reasonable grounds for believing—
 - (a) in the case of land of which the local authority is the occupier, that the horse is there without the local authority's consent, or
 - (b) in the case of other land in the local authority's area, that the horse is there without the consent of the occupier of the land and that the occupier consents to the local authority seizing and impounding it.

...

9 Coming into force

This Act comes into force on the day after the day on which it receives Royal Assent.