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Cardiff Bay
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Dear Deputy Presiding Officer,

Inquiry: Making Laws in the Fourth Assembly

Thank you for your letter of 26 March.

Overview provisions can in our view provide useful summaries of the content of Bills or help the reader navigate larger Bills. Overviews must however be carefully drafted and be succinct in order to be effective.

I should say that some people take a different view as to the usefulness of such provisions, for example arguing that legislation should only contain provisions which have legal effect or opposing them as they may duplicate the content of (currently obligatory) long titles. Practical problems may also occur where Bills are changed during amending stages and care must be taken to ensure that any overview provision remains accurate.

I do not share these views and believe that the main problem with overview provisions can be overcome if they were to replace long titles.

As referred to in "Craies on Legislation" the purpose of the long title of legislation is to give a general, but comprehensive, indication of the contents of a Bill. The purpose of the long title is therefore very similar to the purpose of an overview provision. In the course of UK Parliament Bills long titles will often be influenced by the rules on form and scope. For that reason they generally take the form a number of subjects strung out in one very long sentence, which, dare I say, is often not easy to follow and is inconsistent with modern drafting trends.

In view of the fact that the Presiding Officer may change the rules on the form of long titles and the different rules that the Assembly has on scope, it seems sensible to us to replace them with a more modern overview provision. This would aid accessibility by succinctly setting out the content of a Bill. Where that is not practically possible due to the size of a Bill, we envisage that the role of the

(main) overview would be to aid the reader to navigate the different Parts of the Bill, with more comprehensive overviews being included at the beginning of the Parts (in a way that is similar to existing practice). Our hope is that readers of legislation will become familiar with the practice and use the overview routinely as a starting point to reading an Act.

Although there are limitations to this because of the overarching need for an overview to remain succinct (in order to be effective), where a Bill makes significant amendments to existing legislation an overview provision could be useful by explaining the effect of the amendment. In such cases the text of the amendment itself will generally not be understandable without having the existing legislation to hand (the overview of the very short National Health Service Finance (Wales) Act 2013 is an example).

Like in the case of long titles, overviews should not have substantive effect and we assume for that reason that the courts could consider an overview provision for the purpose of resolving an ambiguity, but it would not be used to displace the clear meaning of the text of a substantive provision. In terms of having two kinds of legislative text, we don't see this as a problem as this distinction already exists and arguably setting it out as an overview that is aside from the main sections and Schedules would make that distinction clearer. As it would not be intended to be a substantive provision it should also in our view be possible to amend it in a similar way to amending headings; thus dealing with the potential for the overview to 'go toxic' by becoming inconsistent with the remainder of a Bill.

I attach two examples of a how an overview on the new form could look for your consideration.

Please let me know if I can be of further assistance.

Yours sincerely,



DYLAN M HUGHES

Y Prif Gwmsler Deddfwriaethol

First Legislative Counsel

Social Services and Well-being (Wales) Bill

[DRAFT]

Overview

- (1) *This Act of the National Assembly for Wales reforms social services law by making provision—*
- (a) *improving the well-being outcomes for people who need care and support and carers who need support,*
 - (b) *about co-operation and partnership by public authorities with a view to improving the well-being of people,*
 - (c) *about complaints relating to social care and palliative care, and*
 - (d) *for connected purposes.*
- (2) *The Act contains ten Parts; see each Part for a further overview of content.*

The following is enacted:

PART 1

INTRODUCTION

Key terms

1 Meaning of “well-being”

- (1) This section applies for the purpose of this Act.
- (2) “Well-being”, in relation to a person, means well-being in relation to any of the following—
- (a) physical and mental health and emotional well-being;
 - (b) protection from abuse and neglect;
 - (c) education, training or recreation;
 - (d) domestic, family and personal relationships;
 - (e) contribution made to society;
 - (f) securing rights and entitlements;
 - (g) social and economic well-being;
 - (h) suitability of living accommodation.
- (3) In relation to a child, “well-being” also includes—
- (a) physical, intellectual, emotional, social and behavioural development;
 - (b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.
- (4) In relation to an adult, “well-being” also includes—
- (a) control over day to day life;

- (b) participation in work.

2 Meaning of “adult”, “child”, “carer” and “disabled”

- (1) This section applies for the purposes of this Act.
- (2) “Adult” means a person who is aged 18 or over.
- 5 (3) “Child” means a person who is aged under 18.
- (4) “Carer” means a person who provides or intends to provide care for an adult or disabled child; but see subsections (7) and (8).
- (5) A person is “disabled” if the person has a disability for the purposes of the Equality Act 2010, subject to provision made under subsection (6).
- 10 (6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.
- (7) A person is not a carer for the purposes of this Act if the person provides or intends to provide care—
- (a) under or by virtue of a contract, or
- 15 (b) as voluntary work.
- (8) But a local authority may treat a person as a carer for the purposes of any of its functions under this Act if the authority considers that the relationship between the person providing or intending to provide care and the person for whom that care is, or is to be, provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those
- 20 functions.

PART 2

GENERAL FUNCTIONS

Overview

This Part—

- 25 (a) *imposes overarching duties on persons exercising functions under this Act in relation to persons who need or may need care and support or carers who need or may need support, so as to give effect to certain key principles (section 3);*
- (b) *requires the Welsh Ministers to issue a statement specifying the well-being outcomes that are to be achieved for people who need care and support and carers who need support*
- 30 *and to issue a code to help achieve those outcomes (sections 4 to 9);*
- (c) *requires local authorities to assess the needs in their areas for care and support, support for carers and preventative services (section 10);*
- (d) *requires the provision of preventative services by local authorities (section 11);*
- 35 (e) *requires the promotion by local authorities of social enterprises, co-operatives, user led services and the third sector in the provision in their areas of care and support and support for carers (section 12);*

- (f) requires the provision by local authorities of a service providing information and advice relating to care and support and support for carers and assistance in accessing it (section 14);
- (g) requires local authorities to establish and maintain registers of sight-impaired, hearing-impaired and other disabled people (section 15).

Overarching duties

3 Overarching duties

- (1) A person exercising functions under this Act must seek to promote the well-being of—
- (a) people who need care and support, and
 - (b) carers who need support.
- (2) A person exercising functions under this Act in relation to—
- (a) an individual who has, or may have, needs for care and support, or
 - (b) a carer who has, or may have, needs for support,
- must comply with the duties in subsection (3).
- (3) The person must—
- (a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,
 - (b) have regard to the importance of promoting and respecting the dignity of the individual,
 - (c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and
 - (d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is impaired through age, disability or otherwise.
- (4) A person exercising functions under this Act in relation to an adult falling within subsection (2)(a) or (b) must, in addition, have regard to—
- (a) the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and
 - (b) the importance of promoting the adult's independence where possible.
- (5) A person exercising functions under this Act in relation to a child falling within subsection (2)(a) or (b), in addition—
- (a) must have regard to the importance of promoting the upbringing of the child by the child's family, in so far as doing so is consistent with promoting the well-being of the child, and
 - (b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is—
 - (i) consistent with promoting the well-being of the child, and
 - (ii) reasonably practicable.

Human Transplantation (Wales) Bill

[DRAFT]

Overview

The main provisions of this Act of the National Assembly for Wales—

- (a) impose a duty on the Welsh Ministers to promote transplantation (section 1);
- (b) provide that certain activities done in Wales for the purpose of transplantation are lawful if done with consent (section 2);
- (c) set out how consent is given to transplantation activities, including the circumstances in which consent is deemed to be given in the absence of express consent (sections 3 to 7);
- (d) make it an offence for transplantation activities to be done in Wales without consent (section 8);
- (e) make amendments (sections 13 and 14) to the Human Tissue Act 2004, including in relation to a code of practice issued under that Act which—
 - (i) gives practical guidance to persons that do transplantation activities, and
 - (ii) lays down the standards expected in relation to the doing of such activities, including how consent is to be obtained.

The following is enacted:

Promotion of transplantation

1 Duty of the Welsh Ministers to promote transplantation

The Welsh Ministers must—

- (a) promote transplantation as a means of improving the health of the people of Wales,
- (b) provide information and increase awareness about transplantation, and
- (c) inform the public of the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent.

Lawful transplantation activities

2 Authorisation of transplantation activities

(1) Transplantation activities are lawful if done in Wales—

- (a) with express consent where that is required (see sections 3 to 5), or
- (b) otherwise with deemed consent (see sections 3 and 7).

(2) The following are transplantation activities for the purpose of this Act—

- (a) storing the body of a deceased person for use for the purpose of transplantation;
- (b) removing from the body of a deceased person, for use for that purpose, any relevant material of which the body consists or which it contains;
- (c) storing for use for that purpose any relevant material which has come from a