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Counsel General and Brexit Minister



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA-L CG 0274 19

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

08 March 2019

Dear Mick,

### **LEGISLATION (WALES) BILL**

During my evidence to the Committee on 18 February, I committed to provide you with further information about section 8 of the Bill. Please find attached a note on this at Annex A.

I also mentioned that I had asked officials to prepare a diagram illustrating the complex nature of legislation currently, and how this will consolidated and codified into a future Code of Welsh Law. Given the references to planning law that have been made during stakeholder evidence, we have used this as the example. I hope that Annex B will be useful to the Committee, as it also gives a sense of how the Cyfraith Cymru/Law Wales website could be used to publish Codes and explanatory material in the future.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jeremy Miles'.

**Jeremy Miles AM**  
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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.

## Annex A: comments on section 8 of the Bill

### *Purpose and effect of section 8*

1. Section 8 of the Bill provides that, where a term used in an Act or instrument has a statutory definition, “other parts of speech and grammatical forms or modifications” of that term are to be interpreted in accordance with the definition. One of the purposes of section 8 is to enable legislation to be shorter and more consistent, in cases where a definition of one term is intended to govern the meaning of related terms.
2. For example, if an Act created a registration scheme, it might define “the register”. The Assembly might intend words like “to register” and “registration” to be interpreted by reference to that register. That intention might be so obvious that the Act did not need to mention it. If the intention was not obvious, the drafter would add wording at the end of the definition of “the register” to make this clear, such as “related expressions are to be interpreted accordingly”. Section 8 avoids the need to repeat this kind of wording in every case, and reduces the risk of different drafters adopting inconsistent approaches.
3. The Committee received evidence that section 8 “goes too far”.<sup>1</sup> There is a sense in which this is true, because section 8 creates a presumption about what legislation is intended to mean, which will not be right for all Acts and instruments. However, the same is true for every rule in Part 2 of the Bill: they are all general presumptions, which are included because the Government believes that they are right for the majority of Welsh legislation. But there will be cases where legislation needs to work differently. That is why most of the rules in Part 2 are subject to any express provision to the contrary or to any context which requires a different interpretation.
4. It was suggested in evidence that any problem with the application of section 8 might be “resolved by interpretation” and that the intended meaning would usually be clear from the context.<sup>2</sup> We agree that there may be cases where a statutory definition does not apply to a related term because the context makes it clear that a different result is intended. However, we do not see this as a weakness; rather, it is an integral feature of how Part 2 of the Bill is intended to operate.

### *Relationships between nouns and verbs*

5. The Committee was referred to Professor Daube’s observation that “agent nouns” (which refer to people who do things) and occasionally “action nouns” (which refer to what is done) may have narrower and more specific meanings than the corresponding verbs.<sup>3</sup> Thus not everyone who bakes is a baker, and it is not only a cook who cooks.<sup>4</sup>
6. These observations have some force as generalisations about what words tend to mean in ordinary language, if they are used without any further explanation. But the meanings of words always depend on the context in which they are used, and it is not hard to think of contexts in which a “cook” or “baker” is just intended to mean a person who cooks or bakes, not a person who does so professionally or in any special way. A person who says “I am a good cook” is not necessarily using “cook” in any special sense.

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<sup>1</sup> Oral evidence of Professor Thomas Glyn Watkin, 14 January 2019, paragraphs 157, 161.

<sup>2</sup> Written evidence of Professor Watkin, 5 January 2019, paragraph 23; oral evidence, paragraphs 153, 155.

<sup>3</sup> Written evidence of Professor Watkin, paragraph 23; oral evidence, paragraph 150. The point was made by Professor Daube in a 1966 lecture on Roman Law, as part of an argument against drawing false historical conclusions from the common linguistic origins of the names of legal concepts. In particular, he noted that action nouns may emerge considerably later than the verbs from which they are derived.

<sup>4</sup> It may also be possible to argue that agent nouns tend to have narrower meanings than the corresponding action nouns. For example, it could be said that “not all baking is done by bakers”.

7. Whatever validity these linguistic claims may have as descriptions of ordinary usage, they do not seem to be arguments about how words are used in the specific legislative contexts where section 8 of the Bill will apply. Section 8 of the Bill is not dealing with the meanings of words in general, but with cases where legislation uses words and expressions which are related to other terms that have been given statutory definitions. The arguments have much less force in this context.
8. An important part of the context of section 8 is that it only applies where an enactment provides a definition of a word or expression. There are two broad types of situation where legislation includes definitions. One is where the legislation is creating a new legal concept or label that would not otherwise have a meaning, such as “Welsh subordinate instrument” in section 3(2) of the Bill. The other is where the legislation is using an ordinary word or phrase, but there is a need to clarify or alter the ordinary dictionary meaning of that word or phrase for the purposes of the legislation, as in the definition of “Wales” in Schedule 1 to the Bill. While legislation should not use words in ways that are misleading, it may need to give them more precise meanings than they usually have.
9. The arguments made in evidence imply that section 8 of the Bill could mean that wide definitions of verbs were inadvertently applied to nouns which were intended to have narrower meanings. However, that suggests that legislative drafters might go to the trouble of providing precise definitions of verbs, but then use related nouns loosely without taking account of those definitions or of section 8.<sup>5</sup> That it not how we expect legislation to be drafted; legislative drafters always need to think carefully about the meanings of the words they use. If an Act defines a term, the drafter must consider how the definition might affect the meaning of any similar terms used elsewhere in the Act.
10. Consistency and precision are particularly important in legislative drafting. That may well mean that legislation uses nouns in ways that correspond more closely to their related verbs than in other less formal contexts. If an Act defines “to import” in a particular way, it is likely to intend “importation” to mean doing what is covered by the definition, and “the importer” to mean the person who does it. That will be the default position under section 8, but it will be necessary to decide in each case whether section 8 has the right effect.
11. Conversely, if an Act defines a verb in a particular way but the drafter wants a related noun to have a more specialised meaning, the Act will have to define the noun. If the Act defines “to import” but intends “an importer” to mean a person who is involved in importation in a very specific way, it will need to state that explicitly. That would be true with or without section 8; and if there are separate definitions of the verb and the noun, section 8 will not be relevant to the relationship between them.<sup>6</sup>
12. The evidence to the Committee mentioned the possibility that a noun may sometimes have a completely different meaning from a corresponding verb.<sup>7</sup> It is certainly possible that legislation may occasionally define one term and also use another term which is etymologically related to it but has a completely different meaning. In that case, we would say that the two terms were not different forms of the same term, and that section 8 would not apply.

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<sup>5</sup> It might also imply that legislation could define “action nouns” but then use “agent nouns” loosely. It is common for legislation to define action nouns (such as “contravention” or “education” or “adoption”) and then to provide for those definitions to apply to “related expressions” such as verbs or agent nouns. But the need for care and precision is just as great when the term defined is a noun as when it is a verb.

<sup>6</sup> Section 8 will still be relevant to other grammatical variations of the defined terms, such as mutations, contractions, verbal inflexions, and plural and possessive forms of nouns.

<sup>7</sup> Oral evidence of Professor Watkin, paragraphs 150, 159.

13. To take the example that was mentioned in oral evidence, section 8 would not mean that a statutory definition of the verbal forms “solicit” or “soliciting” applied to references to the noun “solicitor”. Speakers of British English would not regard “solicitor” as an agent noun of the verb “solicit” but would instead see it as a completely different word. Section 8 would therefore be irrelevant.

#### *Differences between Welsh and English*

14. It has been pointed out that the ways in which verbs and nouns correspond to one another can be different in Welsh and in English. This example was given in evidence:

“If you take a word such as ‘compose’ in English, ‘composer’ goes with ‘compose’, as does ‘composition’. If you turn to Welsh, ‘cyfansoddi’, ‘cyfansoddwr’, ‘cyfansoddiad’, you have now gone to ‘constitution’ and it’s no longer anything to do with composition.”<sup>8</sup>

15. But the word “*cyfansoddiad*” has a range of possible meanings which include “composition” as well as “constitution”.<sup>9</sup> If a piece of legislation used the words “*cyfansodd*” and “*cyfansoddiad*” it is hard to imagine how the context could ever leave any doubt about which meanings were intended. But the drafter and translator would need to make sure they did not use the words in a way that created ambiguity, in the same way that they should always consider and avoid any potential ambiguities.

16. It is possible that the text of a Bill in one language might use a verb and noun that were etymologically related forms of the same word, while the text in the other language text used forms that were etymologically unrelated. For example, the English text might use “to teach” and “teacher” which come from the same etymological root, while the Welsh text used “*dysgu*” and “*athro*” which have different roots. However, it is possible for words to be grammatically related even though they have different etymological origins.

17. It is a feature of many languages, including English and Welsh, that different inflexions or grammatical forms of the same part of speech (e.g. forms of a noun, adjective or verb) may be based on different etymological roots. For example, in English “better” and “best” have a different root from “good,” and in Welsh the same is true for “*gwell*” and “*gorau*” and “*da*”. This can be seen in verbal inflexions too: “go” has a different origin from “went”, as does “*mynd*” from “*aeth*”. The use of etymologically unrelated words in this way is sometimes known as “suppletion”.

18. The concept can also be applied to cases where different parts of speech (such as a noun and adjective) are regarded as related in meaning despite having different etymological origins. For example, in English “lunar” is used as an adjective of “moon” and “bovine” as an adjective of “cow”. In Welsh, “*athro*” is etymologically unrelated to “*dysgu*” (or “*addysgu*”) but performs the function of the agent noun of “*dysgu*” (or “*addysgu*”). They may be regarded as different suppletive parts of speech of the same word.

19. As in these examples, suppletion may occur in one language but not the other. It may mean that the words used in one language are etymologically related while the corresponding words in the other language are not. This is just an issue that drafters and translators will need to keep in mind when producing the two language texts of a Bill or

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<sup>8</sup> Oral evidence of Professor Watkin, paragraph 161.

<sup>9</sup> The *Geiriadur Prifysgol Cymru* gives the following English meanings for “*cyfansoddiad*”: “composition, combination; order, arrangement; constitution, physique; nature, disposition, temperament; the act of composing; that which is composed; structure, fabric; constitution (of state, &c.)”.

instrument, just as they have to keep in mind other differences between English and Welsh.

20. It is also important to note that these issues are not created by section 8 of the Bill, but can already arise. At present, if the drafter of Welsh legislation is proposing to apply a definition of a term to other related terms, or is simply assuming that it is obvious that a definition will apply to related terms, the drafter and translator will need to make sure that it is completely clear which terms the definition applies to in each language. If there is any doubt, the solution may be to define all of the words and expressions in question in both language texts. That position will not be changed by section 8.

### *Conclusion*

21. For the reasons set out above, we consider that the linguistic issues that have been mentioned in evidence are of limited relevance to terms that are defined in Welsh legislation. We do not believe that they demonstrate that section 8 of the Bill will cause any problems.