

LEGISLATION (WALES) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Accessibility of Welsh Law

Section 1 – Duty to keep accessibility of Welsh law under review

10. In order to inform the process of making Welsh law more accessible section 1(1) requires the Law Officer for Wales, the Counsel General, to keep the accessibility of Welsh law under review. The Counsel General is a member of the Welsh Government, appointed by Her Majesty upon the recommendation of the First Minister under section 49 of the Government of Wales Act 2006.
11. The duty in section 1(1) is similar to, and intended to supplement (not replace), the obligation on the Law Commission to keep the law under review under section 3(1) of the Law Commissions Act 1965. It requires a focus on the law as a collective, be that the law on a particular subject or the statute book as a whole. It also means that the Counsel General’s obligation to keep the accessibility of Welsh law under review will be 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.
12. The “accessibility” of Welsh law is defined in section 1(2) as having four elements.
13. The first is the extent to which Welsh law is readily available to members of the public in Welsh and English. The law is not accessible unless those who may be affected by it can obtain it and view it. The main way of achieving this is to publish legislation online in both languages, so that it can be read free of charge.
14. The second element is the extent to which the law is published in an up-to-date form in both languages. In practice accessibility requires more than making each piece of legislation available, and requires it to be available in a form that enables people to see its current effect. This involves identifying whether provisions are in force and showing any amendments made to legislation by other legislation which is made or is brought into force subsequently.
15. The third element is the extent to which Welsh law is clearly and logically organised. To be truly accessible legislation should be organised in such a way as to make it as easy as practicable for people to find the law relevant to them and to see and understand the relationships between enactments. So the structure of legislation should be clear, consistent and coherent; both within individual enactments and across enactments on particular subjects and the statute book as a whole.
16. The final element is the extent to which the law is easy to understand and certain in its effect. This includes the extent to which the law is formulated clearly and precisely, as it will not be accessible if its language is unnecessarily complicated or obscure. This

also includes the availability of other explanatory material or commentary that can help people to understand the law.

17. “Welsh law” is defined in section 1(3) to mean:
 - a. Assembly Acts and Measures and subordinate legislation made under them (in other words, all legislation made by the National Assembly for Wales or under its authority),
 - b. other subordinate legislation made by the Welsh Ministers or the old National Assembly for Wales so far as it applies in relation to Wales (in other words, any other legislation made by the devolved government in Wales), and
 - c. any other enactment or rule of law so far as it applies in relation to Wales and relates to subject matter for which an Assembly Act could make provision (in other words, other legislation or common law rules which could potentially be reformed or re-enacted by the National Assembly).
18. [Schedule 1](#) to the Act contains definitions of various terms used in section 1(3), including “enactment”, “subordinate legislation” and “Wales”.

Section 2 – Programme to improve accessibility of Welsh law

19. This section requires the Welsh Ministers and the Counsel General to develop a programme of action designed to improve the accessibility of Welsh law for each Assembly term that begins after the section comes into force. An Assembly term means the period from an Assembly being formed after a Welsh general election to dissolution prior to the following general election.
20. Although the specific content of a programme will be a matter for the Welsh Ministers and the Counsel General, section 2(3) requires each programme to make provision for measures that are intended to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and to facilitate use of the Welsh language.
21. 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. This 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.
22. [Section 2\(8\)](#) provides that the references to codifying Welsh law in section 2(3) include adopting a structure for Welsh law that improves its accessibility, and organising and publishing consolidated Welsh law according to that structure.
23. 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.
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

*These notes refer to the Legislation (Wales) Act 2019
(c.4) which received Royal Assent on 10 September 2019*

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.

25. References in section 2(3) to “codifying” the law mean, generally speaking, the codification of statute law (legislation). Although a Bill that codifies statute law might incorporate the effect of case law on the meaning of the legislation being consolidated and codified, or rules of common law that are closely related to that legislation, the Welsh Government does not intend to undertake wholesale codification of the common law.
26. [Section 2\(3\)](#) provides that each programme must also include proposals to promote awareness and understanding of Welsh law. This might, for example, include raising awareness of significant changes in the law or of the existence of Welsh law more generally.
27. [Section 2\(3\)](#) also requires each programme to include activities intended to facilitate use of the Welsh language. This is intended to include facilitation of the language in the law, in public administration and more generally. A key aspect of this will be consolidating the law bilingually so that much more of the law for which the National Assembly and Welsh Government are responsible is made in Welsh. Similarly, improving publication arrangements and providing more commentary on the law in both languages will make it easier for the Welsh language to be used in the law and in public administration more generally in Wales. Other projects in a future programme could include making more glossaries for legislation available and further initiatives to develop agreed terminology where this is helpful.
28. [Section 2\(5\)](#) requires a programme to be laid before the National Assembly within six months of the appointment of the First Minister following a general election. This is intended to ensure that each government can be held accountable for what its programme achieves over an Assembly term.
29. Although a new government is not required to inherit the programme of the previous government at the beginning of an Assembly term, in practice, projects from one programme will almost certainly continue until the next programme is prepared and laid, and there is nothing to prevent projects from an earlier programme appearing in a subsequent programme where the timeframe for completing such a project requires that. Some of the individual projects to consolidate and codify the law on a subject will be long term in nature, and could take more than one Assembly term to complete.
30. [Section 2\(7\)](#) requires the Counsel General to make annual reports to the National Assembly on progress against the programme. Such reporting could be made through a statement to the Assembly, which would enable Assembly Members to ask questions of the Counsel General on the report.
31. A programme set out at the beginning of the Assembly term may need to be varied during that term. New projects could be added, or perhaps existing projects removed if they were found not to be suitable for consolidation in light of related legislative reform. [Section 2\(6\)](#) provides that the Welsh Ministers and Counsel General may revise a programme during the Assembly term, but that revised programme must be laid before the National Assembly and again reported against.