

LEGISLATION (WALES) ACT 2019

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Interpretation and Operation of Welsh Legislation

Section 35 – Effect of re-enactment

178. **Section 35** operates where:
- a. an Assembly Act or Welsh subordinate instrument repeals or revokes a provision in any Assembly Act or Measure, Act of the UK Parliament, retained direct EU legislation, or any subordinate legislation made under any of those types of legislation; and
 - b. an Assembly Act or Welsh subordinate instrument re-enacts the provision that is repealed or revoked.
179. By virtue of section 37(2), this section will also apply where a temporary Assembly Act or Welsh subordinate instrument expires and is re-enacted by another Assembly Act or Welsh subordinate instrument.
180. In those cases, section 35(2) means that a reference to the provision which has been repealed or revoked (or has expired) is to be read as a reference to the provision as re-enacted. Section 35(2) applies to references in any of the kinds of legislation mentioned above, and also to references in any other legal instrument (such as a deed, will, contract or lease) or any other document.
181. In practice, wherever possible the repealing or revoking enactment (or another enactment) would make the necessary amendments to all references to the repealed provisions. But in case that does not happen, section 35(2) will provide a useful backstop, and ensure that enactments which refer to those provisions continue to operate.
182. **Section 35(3)** and **(4)** provide that any subordinate legislation that has been made, and any other things that have been done, under a repealed provision which has been re-enacted are to be treated as having been made or done under the re-enactment.
183. **Section 35** is equivalent to section 17(2) of the 1978 Act, but there are some differences between them. Section 17(2) only operates where the repeal and re-enactment are provided for in the same Act. Section 35 will operate where the repeal is provided for in one Assembly Act or Welsh subordinate instrument, and the re-enactment is provided for in a different Assembly Act or Welsh subordinate instrument. This will make it easier to rely on section 34 where necessary. For example, in a consolidation exercise it may be desirable to have one Act setting out the consolidated law, and another Act which deals with all of the repeals and consequential amendments.
184. In addition, whereas section 17(2)(a) provides that a reference to the repealed enactment “shall be construed as” a reference to the re-enacted provision, section 35(2) provides that the reference is to be read as “(or as including)” a reference to the re-enactment. This

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

is intended to clarify that the reference may need to continue to operate as a reference to both the repealed enactment and the re-enactment. For example, if an Assembly Act amends an Act of the UK Parliament so that it no longer applies to Wales, and restates the provisions of that Act that applied to Wales, there may be references to the Act of the UK Parliament that need to be treated as references to both that Act and the new Assembly Act.

185. The reference in section 35(2) to any “instrument or document” corresponds to the provision made by section 23(3) of the 1978 Act for section 17(2)(a) to apply to “any deed or other instrument or document”. Section 35(2) does not make express reference to deeds because there is no doubt that deeds are “instruments”. Provisions modifying references as a consequence of legislative changes do not normally single out deeds for separate mention.
186. [Section 35](#) has effect except to the extent that express provision is made to the contrary or the context requires otherwise.