

**Swyddfa y Cwnsleriaid  
Deddfwriaethol**

**Office of the Legislative Counsel**



## **LEGISLATIVE DRAFTING GUIDELINES**

**JANUARY 2012**

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## PART 1

### INTRODUCTION

#### 1 The purpose of this guidance

- (1) This document sets out the main principles and techniques that the Welsh Government applies to its legislative drafting. It is principally intended to be a guide for members of the Office of the Legislative Counsel who draft Assembly Bills proposed by the Welsh Government, other officials in the Welsh Government who draft Welsh statutory instruments, legislative translators and legislative text editors. It may also be of use to Welsh Government officials drafting subordinate legislation not made by statutory instrument and anyone drafting non-Government Assembly Bills.
- (2) The document will be revised from time to time and the latest version will be made available on the Office of the Legislative Counsel pages of the Welsh Government website [insert link].
- (3) If you have any suggestions for changes or additions to the principles and techniques set out in this document, please send them to:

Dylan Hughes, First Legislative Counsel –  
[Dylan.Hughes@Cymru.gsi.gov.uk](mailto:Dylan.Hughes@Cymru.gsi.gov.uk)

#### 2 The context for this guidance

- (1) Legislation made in Wales is usually made bilingually in Welsh and English. Where legislation is made bilingually, both texts are to be treated for all purposes as being of equal standing<sup>1</sup>. This demands care on the part of the Welsh legislative drafter to ensure that both texts say the same thing and in a way that respects the syntax and idiom of each language.
- (2) The Welsh approach to legislative drafting also needs to take account of how the Assembly and the public respond to the drafting of Assembly Acts and subordinate legislation made by the Welsh Government. This guidance takes into account a number of recommendations made in response to feedback, in particular from Assembly Legislation Committees and the Constitutional Affairs Committee of the third Assembly (2007-2011).

#### 3 Acknowledgements

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<sup>1</sup> Section 156(1), Government of Wales Act 2006.

A substantial part of this document is based on the drafting guidance of the UK Office of the Parliamentary Counsel and their contribution to it is gratefully acknowledged. In addition a significant contribution to the text was made by the Legislative Translation Unit of the Welsh Government. Inspiration has also been drawn from other sources, including the conferences and publications of the Commonwealth Association of Legislative Counsel and the manuals of other law drafting offices in common law jurisdictions around the world.

#### **4 Applying the guidance in this document**

The principles and techniques in this document must be applied flexibly. The drafting challenges that arise vary according to the particular context and there are often a number of solutions to a particular drafting issue. For these reasons, legislative drafting cannot be carried out by following simple rules rigidly; the task requires the drafter to think creatively and exercise judgement about whether a particular drafting technique achieves the best result in each case. The best result is legislation that gives effect to the policy in the clearest way possible.

## **PART 2**

### **CLARITY**

*Clarity, effectiveness, and practicality*

#### **5 Clarity: the overarching objective**

- (1) The overarching objective for Welsh Government legislative drafters is clarity. Legislation must be effective, but it cannot be effective unless it is sufficiently clear.
- (2) An effective draft is certain in its effect, accurate and achieves the policy objectives behind the legislation. Being clear is about making it as easy as possible for readers to understand what is being said. Even if a draft is clear enough to be effective, it may still be possible to make it easier to understand. The drafter's search for clarity should go beyond the minimum required to be effective.

#### **6 Clear for whom?**

- (1) The drafter should be guided by the interests of the reader, bearing in mind that there will usually be a wide range of different kinds of reader. The readers include Assembly Members, lobby groups and members of the general public who take interest in draft legislation under scrutiny and ultimately those using the legislation when enacted or made. The end users include professional advisers and the courts and it is vital that the drafting produces the right result if tested in court. But individuals and bodies affected by the legislation are also end users, and their interests in accessing the law need to be taken into account.
- (2) The requirements of readers may be different depending on who they are. What one set of readers finds easy may be difficult for another and competing interests need to be balanced and given due weight in the drafting.

#### **7 Clarity: simplicity v precision**

- (1) Clarity requires both simplicity and precision and the demands of each call for compromise between them. What is simple will often be precise and what is precise will often be simple, but one does not follow from the other. Too much emphasis on simplicity can lead to imprecision and doubt about the effect of the law. While a law drafted in "blind

pursuit of precision will inevitably lead to complexity; and complexity is a definite step along the way to obscurity"<sup>2</sup>.

- (2) Drafters need to recognise the tension between simplicity and precision and use their experience and judgement to strike the right balance. It is incumbent on senior drafters to assist junior drafters in developing the necessary skills and judgement. Striking the right balance is not easy.

## **8 Clear bi-lingual text**

It is usually the case (although not always) that the English language text of legislation is produced before the Welsh language text. This means that the initial Welsh text will be produced by the government's legislative translators before being checked for legal equivalence with the final text in English. It is important that the Welsh text should **not** unnaturally follow the syntax of the English, and neither should the English unnaturally follow the Welsh syntax. The texts have equal standing in law and the focus in checking legal equivalence between them should be on whether the same legal effect is achieved. Every effort should be made to ensure that this is done through natural and modern language in both versions.

## **9 Practical limitations on achieving the clearest result**

- (1) Some things that affect the clarity of legislation are not within the ultimate control of the drafter. But in all cases the drafter has a role in being an advocate within government for approaches to legislative projects that better promote clear law.
- (2) If an Act or statutory instrument has been amended on a number of previous occasions, a new proposal for amendment should cause those involved to think seriously about updating the law into a consolidated text to improve its accessibility to the public. Or if the proposal is to amend an Act of Parliament or a statutory instrument made in English only this will mean that the substantive law will remain in the English language only – remaking the law would mean producing a text in Welsh too, improving access to the law through the Welsh language.
- (3) There may well be valid reasons why Ministers or departments do not wish to consolidate provisions at the same time as taking forward a legislative reform: for example, it may require resources that are not easily available, or in the case of a Bill, settled but potentially controversial provisions could be opened up to debate and amendment. The final decision on how to proceed in a case like this is

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<sup>2</sup> G.C.Thornton highlights the compromise between simplicity and precision in *Legislative Drafting* (4<sup>th</sup> edition) p. 52.

for Ministers collectively, not the drafter; but it is the role of the drafter to ensure that these matters are brought to the attention of decision makers. If drafters are concerned that these issues are not being considered or if approaches are suggested which are liable to impair access to legislation, the issues should be raised through the management chain of the Legal Services Department and, if necessary, with the Counsel General. The drafter's client is the Welsh Government as a whole, rather than individual departments or Ministers, and the policy interest in clear law must be properly taken into account along with the other policy and handling considerations.

- (4) An important practical consideration for drafters is the time available for drafting. Drafts are often produced under tight time constraints and depend on policy input which may need to take a wide range of interests into account. This may impact on drafting at late stages in the preparation of a Bill or a set of regulations. Work on improving clarity takes time, and sometimes this will not be available.
- (5) In summary, the aim of the drafter is to make a draft as easy to understand as it is possible to make it in the time available, within the parameters set by Ministers and the Counsel General.

## **10 Clarity: drafting techniques**

The following parts of the guidance describe the techniques within the control of the drafter which promote clarity.

## **PART 3**

### STRUCTURE AND ORGANISATION

#### **11 Telling the story**

- (1) The reader of a piece of legislation does not know what the message is until it is delivered. This contrasts with the position of a party to a commercial agreement, who presumably knows, at least in general terms, what the agreement says. So it is especially important to take the reader through the story that needs to be told in the legislation in a logical way.
- (2) Different readers of legislation may be interested in different aspects of the story: for example, Ministers might be interested in how the legislation fits with a general policy, but professional advisers will be more interested in the details of the law. This may influence how the story is told.

#### **12 Organisation and headings**

- (1) The clarity of a text is greatly affected by the way it is organised. The reader can be helped by the way in which legislation is divided into Parts, Chapters etc and the words chosen for their headings; and also by the words chosen for section, article and regulation headings. Text is easier to understand if the topic is specified at the beginning. Parts, chapters and headings help the reader to identify topics.
- (2) It helps if the headings of sections, articles and regulations give as full an indication of the contents as possible, consistent with keeping the heading reasonably short (many drafters try to make sure that their headings do not go into a second line). But a section heading may not need to repeat the work done by a Chapter or Part heading.
- (3) Headings have a relationship with each other, not just with the section. In thinking about structure and organisation of the material it is helpful to imagine the section (or article or regulation), Chapter and Part headings as set out in the table of contents. As the draft develops drafters should re-read the table of contents regularly to make sure it still hangs together.
- (4) All sections, articles and regulations should have headings. If there is no obvious way of summarising the contents of a new section, article or regulation, this may be an indication that it needs to be kept together with the subdivisions of the previous section, article or regulation (see paragraph 20 below).

#### **13 Order of material**

- (1) It helps the reader if the material in the legislation is set out in a logical order, so that later propositions build upon earlier ones.
- (2) The following techniques may assist this—
  - (a) arranging provisions in a time sequence. For example – first provisions dealing with the application for a licence, then the issue of the licence, then the conditions of the licence, then renewal and finally revocation;
  - (b) grouping together provisions with a common subject-matter;
  - (c) grouping together related concepts;
  - (d) expressing similar ideas in provisions with similar structures;
  - (e) putting general and important provisions first.

## **14 Schedules**

- (1) It will often be helpful to divide material into main provisions (sections, articles or regulations) and schedules where the detail is in danger of obscuring the main story.
- (2) Examples of where a schedule may be useful include—
  - (a) technical provision that is unlikely to be of interest to many readers;
  - (b) lengthy material that is at something of a tangent to the main story;
  - (c) repeals or revocations;
  - (d) long series of minor textual amendments;
  - (e) large tables and very long lists;
  - (f) the text of treaties.

## **15 Forward references**

- (1) Reference at any point to material which needs to be understood at that point but which does not appear until later is generally not helpful. This may well be an indication that the material would be better re-ordered.
- (2) But a signpost to later (or indeed earlier) material which is relevant but which does not necessarily need to be understood now may well be helpful. It can be included in brackets (eg “see section X”).

## **16 Overview provisions**

- (1) A section at the beginning of a Bill, or of a Part or Chapter, explaining what is to follow may help the reader to navigate round a larger piece

of legislation where the table of contents is too long to give a clear picture.

- (2) An example is section 2 of the Income Tax Act 2007, which says that the Act contains 17 Parts, and then sets out briefly what is covered by each Part.
- (3) That Act also has a wider overview provision in section 1, which puts the Act into context with other Acts making provision about income tax.
- (4) An overview provision may be helpful in shorter pieces of legislation; for example, if the substantive provisions are on an obscure topic or potentially difficult for all or part of the likely readership.
- (5) For further provision about the drafting of overview provisions see chapter 6 of Part 6 on drafting techniques.

## **17 Structure of sections, articles and regulations: connection between subsections**

- (1) A subsection (or paragraph in an article or regulation) may usually be read in the light of a previous subsection in the same section (or article or regulation). It is usually unnecessary to repeat material which has been established earlier.

### EXAMPLE

- (1) *A person may apply to the council for a permit to play music.*
- (2) *An application under subsection (1) must contain the prescribed information.*
- (3) *On receiving an application made by a person under subsection (1), the council may issue a permit to the person.*
- (4) *A permit issued under subsection (3) must be in the prescribed form.*
- (5) *A permit issued under subsection (3) authorises the holder to play music as indicated in the permit.*

- (1) *Caiff person wneud cais i'r cyngor am drwydded i chwarae cerddoriaeth.*
- (2) *Rhaid i gais o dan is-adran (1) gynnwys yr wybodaeth a ragnodir.*
- (3) *Os bydd y cyngor yn cael cais gan berson o dan is-adran (1), caiff y cyngor ddyroddi trwydded i'r person.*
- (4) *Rhaid i drwydded a ddyroddir o dan is-adran (3) fod ar y ffurf a ragnodir.*

- (5) *Mae trwyddedd a ddyroddir o dan is-adran (3) yn awdurdodi'r deiliad i chwarae cerddoriaeth fel y mae'r drwydded yn ei dangos.*

This could be recast in the following way–

- (1) *A person may apply to the council for a permit to play music.*
- (2) *The application must contain the prescribed information.*
- (3) *The council may issue a permit to the applicant.*
- (4) *The permit must be in the prescribed form.*
- (5) *The permit authorises the holder to play music as indicated in the permit.*

- (1) *Caiff person wneud cais i'r cyngor am drwydded i chwarae cerddoriaeth.*
- (2) *Rhaid i'r cais gynnwys yr wybodaeth a ragnodir.*
- (3) *Caiff y cyngor ddyroddi trwydded i'r ceisydd.*
- (4) *Rhaid i'r drwydded fod ar y ffurf a ragnodir.*
- (5) *Mae'r drwydded yn awdurdodi'r deiliad i chwarae cerddoriaeth fel y mae'r drwydded yn ei dangos.*

- (2) It is helpful if the opening sub-division of a provision gives the reader some idea of what the provision is about, especially if it introduces a new topic. For example, if a section produces a particular legal effect if conditions are met, it may be more helpful to state the effect before listing the conditions.

## **18 Structure of sections, articles and regulations: second sentences**

- (1) Normally each sentence in a section, article or regulation is a separate numbered provision. But there is no rule against having more than one sentence in a numbered provision. The logical connection between sub-divisions is likely to be closer in some cases than others. A second sentence enables the drafter to distinguish two levels of connection between subsections in the same section; or to deal with cases where putting a second thought in a separate provision would place undue emphasis on it.

EXAMPLE (section 108, Housing Grants, Construction and Regeneration Act 1996)

(1) A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section.

For this purpose "dispute" includes any difference.

(2) The contract shall include provision in writing so as to—

(a) enable a party to give notice at any time of his intention to refer a dispute to adjudication;

(b) provide a timetable [etc].

(2) In this example, there are only two main propositions - the right to refer disputes to adjudication and what the contract must say about referrals. The point about the meaning of "dispute" is just an afterthought to the first, and it might be unhelpful to treat it as equal in weight to the other two.

## 19 Sub-headings

Sometimes information may be more accessible to the reader if it is set out under a series of sub-headings (even within the same subsection). An example is section 836(3) of the Income Tax Act 2007:

### **"836 Jointly held property**

[(1), (2)]

(3) But this treatment does not apply in relation to any income within any of the following exceptions.

*Exception A*

Income to which neither of the individuals is beneficially entitled.

*Exception B*

Income in relation to which a declaration by the individuals under section 837 has effect (unequal beneficial interests).

*Exception C*

Income to which Part 9 of ITTOIA 2005 applies (partnerships).

*Exception D*

Income arising from a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).

*Exception E*

Income consisting of a distribution arising from property consisting of –

(a) shares in or securities of a close company to which one of the individuals is beneficially entitled to the exclusion of the other, or

- (b) such shares or securities to which the individuals are beneficially entitled in equal or unequal shares.

“Shares” and “securities” have the same meaning as in section 254 of ICTA.

*Exception F*

Income to which one of the individuals is beneficially entitled so far as it is treated as a result of any other provision of the Income Tax Acts as-

- (a) the income of the other individual, or
- (b) the income of a third party.”

## **20 Section, article and regulation length**

- (1) Drafters should try to avoid sections, articles or regulations containing more than ten subsections or paragraphs.
- (2) However, this is again a matter of judgement: if there is a self-contained story to tell, it may be more convenient for the reader to have it all in one section which is a bit longer, rather than in two or more shorter sections.
- (3) It may also help if the division into sections follows the division of thought. If, for example, you have to make separate provision for three different cases, but one case requires more provision than the other two, it might still be easiest to have only one section for each case, even if that means that one of the sections is longer than you would otherwise wish.

**PART 4**  
LANGUAGE  
**CHAPTER 1**  
PLAIN LANGUAGE

**21 Plain Language**

- (1) Legislation should be in modern standard Welsh and English, reflecting ordinary general usage.
- (2) Drafters should use plain language, so far as possible.
- (3) This means that the drafter should—
  - (a) use simple and familiar words rather than complex expressions and unusual words;
  - (b) avoid using foreign words;
  - (c) avoid using archaic words;
  - (d) avoid using jargon, especially governmental shorthand expressions and unexplained acronyms;
  - (e) avoid including too many different ideas in each sentence or “sense bite” (see paragraph 22).
- (4) Sometimes it is not possible or sensible to express complex concepts in language that is easy for any person to understand. Technical expressions may be appropriate where such terms are well understood by the main audience of the legislation.
- (5) Technical expressions may also be better if any attempt to render their meaning in everyday language would lead to long-winded provisions that are difficult to understand or uncertain in effect.
- (6) But the use of technical language must be fully justified.
- (7) Drafters, translators and text editors need to work together to ensure that plain language is used in both the Welsh language and English language texts.

## CHAPTER 2

### SENTENCES

#### **22 Sentence structure: short “sense bites”**

- (1) Drafters should avoid long blocks of unbroken text, which is the hallmark of traditional forms of legal writing and commonly the subject of caricature and criticism.
- (2) In order to understand the message being conveyed in a sentence, the reader needs to know the structure of the whole sentence. Very long sentences often include a number of ideas; the reader must hold all of these ideas in his or her mind until the end of the sentence before the message can be understood. Sentences become difficult to understand if they contain a number of elements in addition to the subject and the verb; the more additional elements there are, the more difficult it is to understand the sentence.
- (3) This insight commonly leads to the exhortation for drafters to write “short sentences”, but a better recommendation is to write in short “sense-bites”<sup>3</sup>. The rigid application of short sentence only policy, such as a word limit, would not be appropriate. An example of a situation where it would not be sensible to have a fixed limit on the length of a sentences would be a proposition that an office holder is to have a number of different powers in a particular context; a list of those powers (appropriately sub-divided by paragraphs) with appropriate introductory words may be better than a series of sentences opening with the same words – which would be irritating. Information should be presented to the reader in short bites: each of those short bites may be contained in a separate phrase or paragraph which grammatically amount together to a single (longer) sentence.
- (4) A single sentence with subordinate clauses is often harder to understand than a series of sentences expressing the same substance. So a single sentence should ideally contain one idea only, or be split into sense bites each containing one idea only. For example, qualifications or conditions can be split off, into separate subsections of paragraphs or even separate sections, articles or regulations as appropriate.

#### **23 Sentence structure: unnecessary words**

- (1) Unwieldy sentences may be shortened by removing unnecessary words. The following paragraphs contain suggestions for drafters.
- (2) Avoid turning verbs into nouns. These forms result in longer sentences.

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<sup>3</sup> This is the recommendation of Butt and Castle in *Modern Legal Drafting* (2<sup>nd</sup> edition) p.181.

#### EXAMPLES

*“a local authority must consider”*

*“rhaid i awdurdod lleol ystyried”*

#### **Not**

*“a local authority must give consideration”.*

*“rhaid i awdurdod lleol roi ystyriaeth”*

*“an eligible student may apply for a grant”*

*“caiff myfyrwr cymwys geisio am grant”*

#### **Not**

*“an eligible student may make an application for a grant”.*

*“caiff myfyrwr cymwys wneud cais am grant”.*

This is also generally more consistent with the natural sentence structure of the language when drafting in Welsh e.g. “defnyddio'r Gymraeg” as opposed to “y defnydd o'r iaith Gymraeg”.

- (3) Avoid unnecessary cross-references. Think carefully about the need for expressions like “subject to paragraph (x)”.
- (4) Avoid lists of alternatives: consider a generic term, possibly with a definition.
- (5) Avoid the unnecessary use of “such...as” and “y fath ... â” or “y cyfryw ...â”.

#### EXAMPLE

*“provide any information required by the Welsh Ministers”*

*“darparu unrhyw wybodaeth sy'n ofynnol gan Weinidogion Cymru”*

#### **Not**

*“provide such information as is required by the Welsh Ministers”.*

*“darparu'r fath wybodaeth (y cyfryw wybodaeth) ag sy'n ofynnol gan Weinidogion Cymru”*

- (6) Avoid the unnecessary use of “there is” and “there are” or “yna”.

#### EXAMPLE

*“if any information is available”*

*“os oes unrhyw wybodaeth ar gael”*

## **Not**

*"if there is any information available".*

*"os oes yna wybodaeth ar gael"*

- (7) Avoid superfluous or archaic words like "hereby", "herein", "hereafter" (see paragraph 30 (words and phrases)).

## **24 Sentence structure: arrangement of sentence components**

- (1) Overly long or complex sentences can be broken up into the component parts in order to identify the best way of re-arranging the ideas they contain. This can be done by taking the following steps:
- (a) find the subject and the main verb;
  - (b) identify the other elements of the sentence and their relationship to the subject and verb;
  - (c) consider whether the additional elements are conditions, qualifications, exceptions, elaborations, reasons or results;
  - (d) consider whether the additional elements refer more directly to other additional elements than the subject and main verb.
  - (e) identify the elements that are essential to the basic idea being conveyed by the sentence;
  - (f) redraft the provisions by keeping the essential elements together in one sentence or sense bite and place the non-essential elements in separate shorter sentences or sense bites.<sup>4</sup>

## **25 Sentence structure: multiple sentence clauses and location of clauses**

- (1) Sentences that are difficult to understand often have too many clauses or subordinate clauses, or they have groups of words in positions that inhibit comprehension or create ambiguity.
- (2) The classic sentence structure in English is subject-verb-object and in Welsh it is verb-subject-object. If possible avoid inserting words between the subject and the main verb in English and between the subject and the object in Welsh.

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<sup>4</sup> This set of recommendations is drawn from a paper presented to the 2007 Conference of the Commonwealth Association of Legislative Counsel by Dr Duncan Berry. For some practical examples of how to address these questions see the paper *Reducing the Complexity of Legislative Sentences* in the January 2009 edition of *the Loophole* published by the Commonwealth Association of Legislative Counsel <http://www.opc.gov.au/calc/loophole.htm> .

### EXAMPLE

*The Welsh Ministers may issue a licence to the applicant if the required conditions are met.*

*Caiff Gweinidogion Cymru ddyroddi trwydded i'r ceisydd os bodlonir yr amodau gofynnol.*

### **Not**

*The Welsh Ministers may, if the required conditions are met, issue a licence to the applicant.*

*Caiff Gweinidogion Cymru, os bodlonir yr amodau gofynnol, ddyroddi trwydded i'r ceisydd.*

- (3) Drafters should consider the following questions when drafting sentences in English with multiple clauses:
- (a) Is there too much information before the subject of the sentence? (Left branching sentences, in which two or more conditions precede the statement of the legal rule, are more difficult to understand)
  - (b) Is there too much information between the subject and the verb?
  - (c) Is there too much information between the verb and the object or complement?
  - (d) Is there too much information at the end of the sentence?
  - (e) Is there too much information between a relative pronoun and its antecedent?
- (4) Drafters should consider the following questions when drafting sentences in Welsh with multiple clauses:
- (a) Is there too much information before the main verb? (Left branching sentences, in which two or more conditions precede the statement of the legal rule, are more difficult to understand)
  - (b) Is there too much information between the verb and the subject?
  - (c) Is there too much information between the subject and the object?
  - (d) Is there too much information at the end of the sentence?
- (5) It is not suggested that information cannot be inserted at these points in a sentence; but drafters should be wary of placing too much information at these points.

## **26 Sentence structure: conditional sentences**

- (1) The position of conditions in a sentence can affect the clarity of the sentence. The following guidelines may assist the drafter in making sentences clear.

- (2) If there is only one condition precedent, it is usually better to state it first.

EXAMPLE

*If a person has attained the age of 18, he or she is entitled to receive the benefit.*

*Os yw person wedi cyrraedd 18 oed, mae ganddo hawl i gael y budd-dal.*

- (3) A single condition subsequent is usually better placed after the main clause.

EXAMPLE

*A secure tenant is entitled to a rent rebate, except during any period in which he or she is subject to an anti-social behaviour order.*

*Mae gan denant diogel hawl i gael ad-daliad rhent, ac eithrio yn ystod unrhyw gyfnod pryd y mae'n ddarostyngedig i orchymyn ymddygiad gwrth-gymdeithasol.*

- (4) If there are several conditions or exceptions, it is usually better to state the main proposition first and list the conditions or exceptions afterwards.

EXAMPLE –

*“A person is entitled to the grant if the person-*

*(a) is ordinarily resident in Wales,*

*(b) is attending an educational institution full-time, and*

*(c) has attained the age of 18.”*

*“Mae gan berson hawl i'r grant os yw'r person-*

*(a) yn preswyllo fel arfer yng Nghymru,*

*(b) yn mynychu sefydliad addysgiadol yn llawn amser, ac*

*(c) yn 18 oed neu'n hŷn.*

**Not**

*“If a person is ordinarily resident in Wales, is attending an education institution full-time, and has attained the age of 18, that person is entitled to a grant.”*

*“Os yw person yn preswyllo fel arfer yng Nghymru, yn mynychu sefydliad addysgiadol yn llawn amser, ac yn 18 oed neu'n hŷn, mae gan y person hwnnw hawl i grant.”*

## **27 Sentence structure: compressed sentences**

- (1) Drafters should not be too economical with words if a few more words would make their drafts clearer.
- (2) Problems will occur for readers if defined terms are overused.
- (3) Another kind of undesirable compression occurs when drafters try to cover too many cases by a single sentence or formula.
- (4) Drafting by reference to other legislation is yet another example of compressed drafting and the technique should be avoided. It is generally undesirable to draft in a way that causes the reader to refer to other legislation in order for a provision to be understood.
- (5) But in some cases it may be better to draft by reference to other legislation if the alternative is excessive repetition of provisions on the statute-book, particularly if provisions are lengthy or complex.

## **28 Sentences: prefer the active to the passive voice**

- (1) It is usually clearer to use the active voice than the passive voice.

### *EXAMPLE*

*The Welsh Ministers must give a notice  
Rhaid i Weinidogion Cymru roi hysbysiad*

is more quickly grasped than –

*A notice must be given by the Welsh Ministers.  
Rhaid i hysbysiad gael ei roi gan Weinidogion Cymru.*

- (2) But the passive may be appropriate if the agent is unimportant, universal or unknown.

EXAMPLE

*If a notice is given to the Authority ....*

*Os rhoddir hysbysiad i'r Awdurdod...*

might be appropriate if it did not matter who gave the notice.

- (3) The passive may also be useful as a technique for gender-neutral drafting. (see paragraph 48)
- (4) In Welsh, the passive may be preferred for stylistic reasons: for instance, to avoid the use of less common active verbal forms.

EXAMPLE

*Os llofnodwyd yr adroddiad ganddynt yn ystod y cyfnod perthnasol*

might be more readily understood than -

- (5) *Os llofnodasant yr adroddiad yn ystod y cyfnod perthnasol*

**29 Sentences: prefer the positive to the negative**

- (1) The positive is often easier to understand than the negative version of the same thing.
- (2) But this depends on the nature of the proposition and on the overall effect of what is said: it is not a universal rule. A prohibition may well be best expressed in the negative.

EXAMPLE

*Speak after the tone*

*Siaradwch ar ôl y tŷn*

is easier to understand than –

*Do not speak until you hear the tone*

*Peidiwch â siarad nes i chi glywed y tŷn*

EXAMPLE

*Do not walk on the grass*

*Peidiwch â cherdded ar y gwair*

is probably easier to grasp at once than –

*Walk only on the pathways*

*Cerddwch ar y llwybrau yn unig*

- (3) Certain positive constructions in English may be expressed by a negative construction in Welsh.

EXAMPLE

*The authority may only grant permission after it has consulted with the public (positive construction)*

may be drafted in Welsh as-

*Ni chaiff yr awdurdod ond roi caniatâd ar ôl iddo ymgynghori â'r cyhoedd (negative construction)*

- (4) Negatives are often better avoided when expressing a quantity.

EXAMPLE

*not less than 25%*

*nid llai na 25%*

would often be more clearly expressed as-

*at least 25%*

*o leiaf 25%*

or

*25% or more.*

*25% neu fwy.*

- (5) It is best to avoid double negatives: but note that it may not always be possible.

#### EXAMPLE

*The Welsh Ministers have not certified that no application was made*

*Nid yw Gweinidogion Cymru wedi ardystio na wnaed cais*

does not mean the same as –

*The Welsh Ministers have certified that an application was made.*

*Mae Gweinidogion Cymru wedi ardystio bod cais wedi ei wneud.*

- (6) Apparent double negatives may also be used in certain constructions in Welsh, even if they are avoided in the corresponding construction in English.

#### EXAMPLES

*No person may make an application*

Will need to be translated as -

*Ni chaiff neb wneud cais*

*Only an applicant may apply for costs*

Will need to be translated as -

*Ni chaiff ond ceisydd hawlio costau*

## CHAPTER 3

### WORDS AND PHRASES

#### 30 Words and phrases

##### **Above and below /uchod ac isod**

Drafters should not use references to “regulation X above” or “regulation Y below”, or to “rheoliad X uchod” or “rheoliad Y isod”, unless it is necessary in the context to distinguish the provisions of the instrument from the provisions of another instrument, Act or Measure.

##### **Any /unrhyw**

Drafters should not use “any” when the indefinite article “a” will do. “Any” and “unrhyw” should only be used where “any and every” is meant. “Any” and “unrhyw” can also be ambiguous—

*For example-*

*The Welsh Ministers must consult any organisation appearing to them to be representative of the agricultural producers in Wales.*

*Rhaid i Weindogion Cymru ymgynghori ag unrhyw sefydliad y mae'n ymddangos iddynt eu bod yn cynrychioli cynhyrchwyr amaethyddol yng Nghymru.*

This is ambiguous because it is not clear whether “any” or “unrhyw” means all such organisations, or any one of them.

##### **But / ond**

There is no rule against putting “But” or “Ond” at the beginning of a sentence, and it can on occasion be helpful. But it should not be overused. Unnecessary or over-emphatic words distract the reader.

An initial “but” or “ond” is unnecessary if it is in any event obvious that the second statement qualifies the first. For example, a proposition to the effect that “Nothing in this section applies” / “Nid oes dim yn yr adran hon yn gymwys” or “Subsection (x) does not apply” / “Nid yw is-adran (x) yn gymwys” does not need an initial “but” or “ond”.

##### **Comprise**

“Comprise” should not be used where “include” or “contain” is meant.

*For example-*

*The Act comprises of a number of regulation making provisions.*

would better drafted as-

*The Act includes/contains a number of regulation making provisions.*

The primary meaning of “comprise” is “consist of”, “to be made up of”.

*For example -*

*This section comprises regulation making provisions.*

The passive use of “comprise” is synonymous.

*For example-*

*This section is comprised of regulation making provisions.*

However, “comprise of” in the active voice is non-standard usage.

*For example-*

*This section comprises of regulation making provisions.*

would be better drafted as-

*This section consists of regulation making provisions.*

### ***Hereby, hitherto, hereinafter, hereinbefore etc***

“Hereby” and the other “here-” words should not be used because they are archaic and usually unnecessary. The use of “hereby” might serve some useful purpose if there is a need to refer to a provision, but that purpose is likely to be better met by more specific words (e.g. “the board is abolished by this regulation”).

### ***In particular /yn benodol***

The expressions “in particular” and “yn benodol” are commonly used in legislation to indicate that a subsequent list of things is not exhaustive:

*For example-*

*This power includes, in particular,*-

*(a)...*

*(b)...*

*Mae'r pŵer hwn yn cynnwys, yn benodol,* -

*(a)...*

*(b)...*

Or the expressions may be used to indicate that that a single example is not the only thing meant:

For example-

*For the purpose of furthering the objectives in section X, the Welsh Ministers may, in particular, do Y.*

*At ddibenion hyrwyddo'r amcanion yn adran X, caiff Gweinidogion Cymru wneud Y yn benodol.*

There have been instances during the third Assembly of this use of “in particular” and “yn benodol” not being understood by Assembly Members scrutinising legislation before the Assembly or by some consultees. It is recommended that drafters deploy alternative ways of indicating that a list is not intended to be exhaustive or that one thing specified is not intended to be the only thing.

For example-

*The power includes, but is not limited to,-*

*(a)...*

*(b)...*

*.*

*Mae'r pŵer yn cynnwys, ond nid yw'n gyfyngedig i'r canlynol,-*

*(a)...*

*(b)...*

*For the purpose of furthering the objectives, the Welsh Ministers may, among other things, do X.*

*At ddibenion hyrwyddo'r amcanion, caiff Gweinidogion Cymru wneud X ymhlith pethau eraill.*

### **Only/nid...ond, dim ond..... yn unig**

The word “only” and the corresponding Welsh phrases are easily misplaced, so drafters must take care. The sentences in the following example demonstrate the problem. Note that the Welsh examples sometimes allow for the use of emphatic constructions. Also note the ambiguity in (c), which could have the same meaning as (a) or (d), and the ambiguity in (g), which could have the same meaning as (e) or (i).

*(a) Only the local authority may give the eligible student the grant.  
(a) Ni chaiff ond yr awdurdod lleol roi'r grant i'r myfyriwr cymwys /  
Dim ond yr awdurdod lleol a gaiff roi'r grant i'r myfyriwr cymwys / Yr  
awdurdod lleol yn unig a gaiff roi'r grant i'r myfyriwr cymwys.*

*(b) The only local authority may give the eligible student the grant.  
(b) Yr unig awdurdod lleol a gaiff roi'r grant i'r myfyriwr cymwys.*

*(c) The local authority only may give the eligible student the grant.  
(c) Yr awdurdod lleol yn unig a gaiff roi'r grant i'r myfyriwr cymwys.*

*(d) The local authority may only give the eligible student the grant.  
(d) Ni chaiff yr awdurdod lleol ond rhoi'r grant i'r myfyriwr cymwys. /  
Dim ond rhoi'r grant i'r myfyriwr cymwys y caiff yr awdurdod lleol.*

*(e) The local authority may give only the eligible student the grant.  
(e) Ni chaiff yr awdurdod lleol roi'r grant ond i'r myfyriwr cymwys. /  
I'r myfyriwr cymwys yn unig y caiff yr awdurdod lleol roi'r grant. /  
Dim ond i'r myfyriwr cymwys y caiff yr awdurdod lleol roi'r grant.*

*(f) The local authority may give the only eligible student the grant.  
(f) Caiff yr awdurdod lleol roi'r grant i'r unig fyfyrwr cymwys.*

*(g) The local authority may give the eligible student only the grant.  
(g) Ni chaiff yr awdurdod lleol roi'r grant ond i'r myfyriwr cymwys. /  
Ni chaiff yr awdurdod lleol roi ond y grant i'r myfyriwr cymwys. / Y  
grant yn unig y caiff yr awdurdod lleol ei roi i'r myfyriwr cymwys. /  
Dim ond y grant y caiff yr awdurdod lleol ei roi i'r myfyriwr cymwys.*

*(h) The local authority may give the eligible student the only grant.  
(h) Caiff yr awdurdod lleol roi'r unig grant i'r myfyriwr cymwys.*

*(i) The local authority may give the eligible student the grant only.  
(i) Ni chaiff yr awdurdod lleol roi ond y grant i'r myfyriwr cymwys. /  
Y grant yn yn unig y caiff yr awdurdod lleol ei roi i'r myfyriwr  
cymwys. / Dim ond y grant y caiff yr awdurdod lleol ei roi i'r  
myfyriwr cymwys.*

## **Or /neu/ynteu**

“Or” is not always disjunctive in character. In Welsh, “or” is expressed in one of two ways. When “or” is not disjunctive “neu” is generally used. But when “or” is disjunctive in nature, the written form “ynteu” (usually expressed as “ta” in speech) is used.

A power to impose conditions on grants or loans would normally be read as allowing conditions relating to one or both.

### *EXAMPLE*

*The regulator may require the employer to—*

- (a) produce any relevant document, or*
- (b) provide any relevant information.*

*Caiff y rheoleiddiwr ei gwneud yn ofynnol i'r cyflogwr—*

- (a) dangos unrhyw ddogfen berthnasol, neu*
- (b) darparu unrhyw wybodaeth berthnasol.*

In that example, it seems very unlikely that the powers are intended to be mutually exclusive. But in other cases it may be less clear, as perhaps the following example illustrates.

### *EXAMPLE*

*The regulator may require the employer to—*

- (a) pay a fine, or*
- (b) take action of a description specified by the regulator.*

*Caiff y rheoleiddiwr ei gwneud yn ofynnol i'r cyflogwr—*

- (a) talu dirwy, neu*
- (b) cymryd camau o ddisgrifiad a bennir gan y rheoleiddiwr.*

The Welsh version using ‘ynteu’ would make it clearer that (a) and (b) are mutually exclusive.

*Caiff y rheoleiddiwr ei gwneud yn ofynnol i'r cyflogwr—*

- (a) talu dirwy, ynteu*

(b) cymryd camau o ddisgrifiad a bennir gan y rheoleiddiwr.

So a degree of caution is in order. It may be possible to make the intention clear by the introductory words spelling out that both of two alternatives are a permissible option; for example, in the case of a penal provision allowing “the imposition of a fine or imprisonment for a period of up to 2 years or both”/ “gosod dirwy neu cyfnod o garchar o hyd at ddwy flynedd, neu’r ddau”.

### **Provided that...**

The use of the lawyer’s proviso to introduce conditions, limitations or exceptions should be avoided. “Provided that...” is an archaic formulation that has been criticised by a number of writers who advocate the use of plain language in legal drafting<sup>5</sup>.

The appearance of these words in a sentence is sometimes a sign that the sentence is too long.

The words “provided that” are ambiguous. The phrase might be used to introduce conditions, limitations, exceptions or simply a new proposition that does not qualify or limit the preceding material.

If the intention is to introduce a limitation or qualification drafters should consider simple words like ‘if’, ‘but’, ‘when’ or ‘however’ instead.

New provision that is not a true limitation or qualification does not need an introduction.

### **Same**

“Same” or “of the same” should not be used as a substitute for “it” or “them”. It can often be dropped altogether; for example “*The notice must be in writing and the local authority must deposit two copies **of the same** in each public library in its area*”

### **Save**

“Save” should not be used if “but” or “except” is meant.

### **Shall**

“Shall” can be used in English to denote the future, to denote obligation or in a declaratory manner. Welsh Government drafting policy is to minimise the use of the legislative “shall” so as to avoid this

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<sup>5</sup> E.g. P. Butt. & R. Castle, *Modern Legal Drafting* (2<sup>nd</sup> edition).

ambiguity. There is no equivalent single term in Welsh covering all of the senses in which “shall” is used in English, so the same issue does not arise in the Welsh text. The future in Welsh is expressed either by using the present/future inflected form of the verb or by a periphrastic construction consisting of the future forms of the verb ‘bod’ and the relevant verb-noun. Obligation is expressed by use of the various nouns, adjectives and prepositions (e.g. rhaid, gofynnol, i). Declaratory statements are generally expressed by using the third person imperative form of the verb (e.g. bydded).

There are various alternatives to “shall” which can be used, depending on context—

- “must”/ “rhaid” in the context of obligations (although “is to be” and “it is the duty of” may also be appropriate alternatives in certain contexts);
- “there is to be” / “bydded” in the context of the establishment of new statutory bodies etc.;
- use of the present tense in provisions about application, effect, extent or commencement; in Welsh the simple present may be differentiated from the continuous present;
- “is amended as follows” / “wedi ei ddiwygio fel a ganlyn” in provisions introducing a series of amendments;
- “is repealed” / “wedi ei ddiddymu” in the context of free-standing repeals;
- “is to be” / “i’w” in the context of provisions relating to statutory instruments (and, if appropriate, “may not” “ni chaiff” as an alternative to “shall not”).

A reason for not departing from “shall” might be that it would appear in text to be inserted near to existing provisions that use “shall” in the same sense.

### ***Subject to / yn ddarostyngedig i***

To say that “This section is subject to section x” / “Mae’r adran hon yn ddarostyngedig i adran x” is not always helpful. It may be better to be more precise about the relationship between the propositions (eg “This section does not apply to... (see section x)” / “Nid yw’r adran hon yn gymwys i ... (gweler adran x)”).

It may also be possible to use another expression: for example, “but see section X” / “ond gweler adran X”. Or it may be possible to state briefly the case to which a different rule applies by saying, for example, “except” “ac eithrio” or “unless” “oni bai” (as in “Unless the person concerned is under 30” / “Oni bai bod y person dan sylw yn iau na 30 oed”).

The relationship between the provisions may be particularly hard to follow if “subject to” / “yn ddarostyngedig i” is at the beginning of the sentence. It may be better to start with the main proposition and then indicate that there is a qualification (perhaps in a second sentence).

Alternatively, it may be possible to dispense with “subject to” / “yn ddarostyngedig i” altogether, especially if the qualifying proposition is close to the proposition it qualifies— in which case the reader may be expected to grasp the relationship between the two without extra help.

“Subject to what follows” and “subject as follows” / “yn ddarostyngedig i’r hyn a ganlyn” are potentially very ambiguous and should be avoided unless it is abundantly obvious from the context exactly which of the following provisions are being referred to. Where there is any doubt, specify exactly which provisions you mean (or express the relationship in some other way).

Global cross-references such as “Subject to the provisions of the Corporation Tax Acts” / “Yn ddarostyngedig i ddarpariaethau yn Neddau’r Dreth Gorfforaethau” are sometimes unavoidable but may not be entirely meaningful to non-expert readers. If the reference cannot be avoided, try to include a list of where the relevant other provision is made.

### ***Such / y fath, ...o’r fath, y cyfryw...***

“Such” should not be used if “the”, “a” or “that” will do. “Y fath ...”, “...o’r fath”, “y cyfryw” should similarly be avoided in Welsh if the use of the definite article or demonstrative adjectives suffices.

If “such” is being used to refer back to something care must be taken over how much is to be picked up by the previous proposition.

For example, if a draft says “such” period”, does this pick up the period of 12 months mentioned earlier, or that period plus one or more of the qualifications built into the earlier provision that make the period shorter or longer in particular circumstances?

### ***Thereby, thereafter, thereto, therefrom, etc***

“There-“ words seem old fashioned to modern readers and they should be avoided. As with “here-“ words, there may be some purpose in using them, in the case of “there-“ words for references back. A reference back that is necessary is usually better achieved with more specific words.

***“of this Act”, “of this section”, “of this Schedule” etc / “o’r Ddeddf hon”, “o’r adran hon”, “o’r Atodlen hon”***

This relates to the use of “this Act”, “of this section” and “of this Schedule” etc and the corresponding Welsh expressions in connection with references to sections, subsections and paragraphs of a Schedule etc.

As a general rule, use of these expressions should be avoided.

But they may serve a useful purpose:

- (a) in contexts where “above” or “below” might otherwise be used (see above): there may be reasons of symmetry or emphasis that mean that, for example, “of this Act” is to be preferred to “above” or “below”;
- (b) where there is a reference in a Schedule to “this Part” or “Part 2” and both the Schedule and the Act containing it are divided into Parts; it may be desirable to add “of this Act” or “of this Schedule” to make clear which Part of what is being referred to;
- (c) where there is a reference to a Chapter of the Part in which the reference occurs and another Part of the Act is also divided into Chapters; it may be desirable to add “of this Part” to the reference in the interests of clarity.

The same principles apply to the use of the corresponding Welsh expressions.

### **Where / pan fo**

Sometimes “where” is clearly preferable to “if”, and sometimes “if” is clearly preferable to “where”, but sometimes either could be used. The same is true of the corresponding Welsh expressions “pan fo” and “os”.

“Where” (“pan fo”) is useful for stating a case (or a set of circumstances) in which a later proposition applies.

“If” (“os”) is useful for stating a contingency.

But the two overlap, as a case may also be a contingency: in those circumstances “if” (“os”) may often be more instantly comprehensible.

#### *EXAMPLE*

Instead of-

*Where a person is served with a notice, [then something follows],*

*Pan fo hysbysiad yn cael ei gyflwyno i berson, [yna mae rhywbeth yn dilyn],*

*you could say-*

*If a person is served with a notice, [then something follows]*

*Os cyflwynir hysbysiad i rywun, [yna mae rhywbeth yn dilyn].*

### **Will / bydd**

“Will” / “bydd” has sometimes been used where makers of subordinate legislation are imposing obligations on themselves. It is preferable to impose obligations in legislation in objective terms, imposing the obligation rather than stating an intention.

#### **EXAMPLE**

*Applications received by the Welsh Ministers must be acknowledged within seven day”*

*Rhaid cydnabod ceisiadau a ddaw i ddwylo Gweinidogion Cymru cyn pen saith niwrnod*

#### **Not**

*Applications received by the Welsh Ministers will be acknowledged within seven days*

*Bydd ceisiadau a ddaw i ddwylo Gweinidogion Cymru yn cael eu cydnabod cyn pen saith niwrnod*

## **31 Neologisms**

- (1) Neologisms should be avoided in Welsh and English. On certain rare occasions, however, the use of neologisms in Welsh may be necessary: although Welsh has been used as a language of law for many centuries, legislation and many of the technical fields with which it is concerned are relatively new domains for the Welsh language.
- (2) This is sometimes manifested in the appropriation of a word already in existence but which has fallen out of favour in modern Welsh and lending it a new meaning. The word ‘mangre’ (with the appropriate mutation in context to ‘fangre’) is used in section 41 of the Children and Families (Wales) Measure 2010 to convey the meaning of ‘premises’.
- (3) The word ‘premises’ was a longstanding problem for legislation in Welsh until the word ‘mangre’ (a place or location) was appropriated for the drafting of statutory instruments some years ago and given a specific meaning. Similarly, in section 37 of the Welsh Language Measure 2011, the word ‘neilltuedig’ (already in existence with the meaning ‘set

apart' or 'reserved') was appropriated for the English 'qualifying' as in 'qualifying person' and 'qualifying service delivery standard'. The word normally used for 'qualifying' is 'cymwys', but the decision was taken to appropriate another word because 'cymwys' also means 'applicable' and 'penodol gymwys' was already in use in the Measure for 'specifically applicable' and 'cymwysadwy' in use for 'potentially applicable'.

- (4) In coining new terms, best terminological practice should be observed. Drafters and translators should follow the Guidelines for the Standardization of Terminology published jointly by the Welsh Government Translation Service and the Welsh Language Board.

## **32 Regional variations in Welsh words**

- (1) The Welsh and English used in legislation needs to be understandable to speakers in all parts of Wales and so the use of dialect and colloquialisms is generally to be avoided. However, there are rare instances in Welsh where there is not an acceptable word in use throughout the whole of Wales and in those cases regional alternatives are used in Welsh legislative drafting; for example, Rheoliadau Gwrychoedd neu Berthi Uchel (Ffioedd) (Cymru) 2004 (The High Hedges (Fees) (Wales) Regulations 2004) where both 'gwrychoedd' and 'perthi' are used for 'hedges' .
- (2) No alternatives have appeared in Assembly Measures, although the issue has arisen. There are two Welsh words for milk: 'llaeth' and 'llefrith'. In section 1(1)(b) of the Red Meat (Wales) Measure 2010 only 'llaeth' is used, the reasoning being that although there are two words in use, one is dominant and would be understood in all parts of Wales. In this case it was not thought worth disrupting the flow of text, which inevitably follows when mentioning alternative words. This demonstrates need for the flexible application of drafting techniques to produce the best result.

## CHAPTER 4

### SINGULAR AND PLURAL

#### 33 Bodies corporate: plural or singular

- (1) In English, local authorities and other bodies corporate may be treated as plural or singular nouns; in Welsh, a single noun is always treated as a single noun and a plural as a plural.
- (2) In general a local authority or other body corporate should be treated in English as a singular noun.
- (3) But when textually amending legislation that uses the plural in English, it may be necessary to follow suit in order to avoid confusion.

## CHAPTER 5

### NUMBERS AND DATES

#### 34 Cardinal Numbers

- (1) Figures should normally be used for all numbers above ten;
- (2) Figures should also normally be used for numbers up to and including ten that relate to sums of money, times or periods of time, ages, dates, units of measurement or in quasi-mathematical contexts;
- (3) In other contexts, numbers up to and including ten should either be spelt out or be expressed as figures depending on what seems more natural or appropriate in the contexts concerned;
- (4) A number that begins a sentence should normally be spelt out;
- (5) Mixing words and figures referring, in a single context, to things of the same kind should be avoided.
- (6) In Welsh texts the following points of house-style have been adopted:
  - (a) the traditional vigesimal rather than the decimal system is to be used;
  - (b) from 11 onwards, the pattern '11 o ddiwrnodau' rather than '11 diwrnod' is to be followed
  - (c) figures will cause mutation as if they were words e.g. '2 bwynt', '6 phwynt', '8 bwynt'.
  - (d) 7 and 8 cause soft mutation (except for words beginning with 'd' or 'm').
  - (e) 'blwydd' 'blynedd' and 'diwrnod' are mutated nasally after every cardinal number except 2, 3 and 4 using the 'deng', 'deuddeng', and 'pymtheng' forms.

- (f) the 'deng', 'deuddeng', and 'pymtheng' forms are to be used with words beginning with a vowel e.g. 'pymtheng awdurdod' or 'm-' e.g. 'deng mis'.

### **35 Ordinal numbers**

- (1) Ordinal numbers above 10<sup>th</sup> should not be spelt out;
- (2) The question of whether numbers below 11 should or should not be spelt out should be decided in the light of what seems more natural or appropriate in the contexts concerned.

### **36 Dates**

- (1) Numbers should be used.
- (2) The English endings -st, -rd and -th and the Welsh endings -ydd, -fed, -ed, -ain etc in conjunction with figures for dates should not be used in the body of legislation.

### **37 Percentages**

“%” should be used rather than “per cent” / “y cant”.

## PART 5

### GENDER NEUTRAL DRAFTING

#### *General*

### **38 What is gender-neutral drafting?**

- (1) The Presiding Officer's Determination on Proper form for Public Bills for Acts of the Assembly states that the text of a Bill "must not use gender specific language unless the meaning of the provision cannot be expressed in any other way (e.g. the provision is one that relates only to persons of a particular gender)"<sup>6</sup>. The use of gender specific language is also one of the grounds upon which the Constitutional and Legislative Affairs Committee of the National Assembly for Wales may report to the Assembly on a statutory instrument under standing order 21.2<sup>7</sup>.
- (2) Gender neutral drafting means that, where there are suitable alternatives available, the constructions drafters use should not imply that only men do certain things, such as hold office. Generally, gender-specific language should only be used for references to persons of one gender or the other (for example, in provisions that deal with women taking maternity leave).
- (3) This presents a challenge to drafters in making drafts as clear as possible. The paragraphs that follow explore a number of techniques that may be used to draft in a gender-neutral way without over-complicating the text.
- (4) The techniques will not be suitable in all contexts. The drafter should choose a technique that works best in each context that presents itself.

#### *Gender- specific pronouns*

### **39 Gender-specific pronouns**

- (1) The old drafting practice in English only of using gender-specific pronouns relied in part on section 6 of the Interpretation Act 1978, by which a gender-specific pronoun (usually the male pronoun) is used to refer to a person who may be either male or female. This involved using "he" instead of "he or she" or "he, she or it", and so on with "him" and "his".

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<sup>6</sup> <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance.htm>

<sup>7</sup> <http://www.assemblywales.org/bus-home/bus-assembly-guidance.htm>

- (2) In order to draft gender-neutrally in English this practice should not be overused. The following sections set out a number of methods that can be used to help to eliminate gender-specific pronouns. Different considerations apply to drafting in Welsh.
- (3) In Welsh, masculine pronouns are used to refer to masculine nouns and feminine pronouns are used to refer to feminine nouns – the sex of the person referred to is immaterial<sup>8</sup>. This means that there is no need in Welsh to avoid the gender-specific pronouns in the same way as in English.
- (4) The Interpretation Act assumes that all UK legislation will be drafted in the English language, and takes no account of Welsh or other languages. As a result, section 6 does not work for Welsh.
- (5) Welsh, in common with many other languages such as French, Spanish and Russian, has a grammatical gender system which means that all nouns in the singular are either masculine or feminine. This is not an indication of sex, but a traditional label that grammarians use.
- (6) The introduction to the Welsh Academy English-Welsh Dictionary states that “it would be just as logical to classify nouns as red nouns and green nouns, or as round nouns and square nouns”. Conversely, English has no grammatical gender, and its pronouns refer only to the sex of the person referred to.
- (7) While there is usually a correlation in Welsh between sex and grammatical gender with regard to nouns denoting persons (e.g. job titles, relations, roles etc.<sup>9</sup>) this is not universally the case. ‘*Plentyn*’ (child) is masculine, and so the masculine pronoun ‘*ef*’ and the possessive ‘*ei*’ followed by a soft mutation (him and his) are used to refer to the word, even if the child in question is a girl.
- (8) Both the feminine and masculine pronoun may be used in Welsh if a pair of nouns, one masculine and one feminine, is used, but using pairs of pronouns (like *ef/hi*, *ganddo ef/ganddi hi*) should be avoided as far as is possible.<sup>10</sup>
- (9) In Welsh, the pronoun should always follow the grammatical gender of the noun even if the English draft uses *his/her* (a construction that should also be avoided in English – see below).

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<sup>8</sup> *The Welsh Academy English-Welsh Dictionary (1995)*, p xii.

<sup>9</sup> For example, ‘*mam*’ (mother) is feminine and ‘*tad*’ (father) is masculine

<sup>10</sup> For example, for the English word “teacher”, there are two words in Welsh – ‘*athro*’ for a male teacher, and ‘*athrawes*’ for a female teacher. If both ‘*athro*’ and ‘*athrawes*’ are used, both the masculine and feminine pronouns need to be used. The masculine possessive pronoun ‘*ei*’ causes a soft mutation and the feminine possessive pronoun ‘*ei*’ causes an aspirate mutation, so consequential changes will occur throughout the text.

EXAMPLE—

If a parent sends **his or her** child to the school > Os bydd rhiant yn anfon **ei** blentyn i'r ysgol

#### 40 Accumulating pronouns

- (1) The practice of using "he or she" instead of "he" is quite common in current Welsh Government drafting practice in English. Arguably, it is not truly gender-neutral and should be avoided unless there is no better way of achieving gender-neutral drafting.
- (2) Overuse of the "he or she" method leads to inelegant sentences and is distracting. The effect is exacerbated when a non-gender specific pronoun is also needed to cover the eventuality of the person referred to being a body rather than an individual ( i.e. "he, she or it").

#### 41 Repeat the noun

- (1) Substituting a noun for the pronoun is the most usual and effective technique for avoiding gender-specific pronouns in English. In Welsh, in the formal register, it is not always essential or desirable to use any pronoun in corresponding constructions.

EXAMPLE—

*A person ceases to be the chair or the deputy chair if the person...*

*Mae person yn peidio â bod yn gadeirydd neu'n ddirprwy gadeirydd os yw'n...*

**Instead of**

*A person ceases to be the chair or the deputy chair if **he or she**...*

*Mae person yn peidio â bod yn gadeirydd neu'n ddirprwy gadeirydd os yw ef yn...*

*A member of the Tribunal may resign the office of member.*

**Instead of**

*A member of the Tribunal may resign **his or her** office.*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39 (3))*

- (2) Substituting a noun in this fashion often enhances clarity of the English draft, since the reader does not have to go back and work out what the antecedent of a pronoun is.
- (3) The drawback of repeating the subject is that, in some instances, it can lead to inelegant provisions. The technique should be used with caution where the noun needs to be repeated several times, as it may become too cumbersome.

**42 Use a neutral word or phrase such as “person”, “any person”, “every person” or “no person”**

- (1) It may be appropriate to substitute a neutral word or phrase in English, such as “person” for the pronoun.

*EXAMPLE—*

*After a person's term as a member ends, the person may carry out the duties of a member in respect of a matter that was referred to the Commission.*

**Instead of**

*After a member's term ends, **he or she** may carry out the duties of a member in respect of a matter that was referred to the Commission.*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))*

- (2) In this example it would be inappropriate to repeat the noun “member” in each instance because the provision deals with the situation where the person is no longer a member (because the person's term as member has ended).

**43 Use a label**

- (1) The adverse effects of repeating a noun can sometimes be mitigated by using a letter as a label for a noun that would otherwise appear repeatedly:

*EXAMPLE—*

*If a person ("C") makes a claim under this section, C is entitled...*

*Os yw person ("C") yn gwneud cais o dan yr adran hon, mae gan C hawl i...*

- (2) Constantly repeating titles, for instance "the Chief Inspector of Education and Training in Wales" can also be avoided by using a shorter label e.g. "the Chief Inspector" and adding a definition:

*EXAMPLE—*

*In [this Matter][these regulations], "the Chief Inspector" means the Chief Inspector of Education and Training in Wales.*

*Yn y [Mater hwn][rheoliadau hyn], ystyr "y Prif Arolygydd" yw Prif Arolygydd Addysg a Hyfforddiant yng Nghymru.*

- (3) Note that using a letter as a label for a noun in order to avoid using the pronoun will not have the same effect in Welsh as in English. Although it is possible to use a letter as a label in Welsh (see the example in subsection (1)), letters of the alphabet are treated as feminine nouns (rather than being gender-neutral as in English). However, the fact that the letter is treated as grammatically feminine in Welsh does not imply that the person it represents is a woman.

#### **44 Eliminate references back**

Whilst repeating the noun can often be cumbersome when there are a number of references back, sometimes a reference back is unnecessary and the same result can be achieved by changing the structure of the sentence or using a synonym or alternative phrase.

*EXAMPLE—*

*The claimant should as far as possible be put in the position that would have prevailed if the breach had not occurred.*

**Instead of**

*The claimant should as far as possible be put in the position **he** would have been in had the breach not occurred.*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))*

#### **45 Omit pronouns**

Sometimes a pronoun can be omitted completely, even if that means rewriting the sentence. This is often a compact and clear way of achieving gender-neutral drafting.

EXAMPLE—

*If satisfied that all the conditions are fulfilled, the Inspector may...*

**Instead of**

*If **he or she** is satisfied that all the conditions are fulfilled, the Inspector may...*

*A member of the Tribunal may resign office...*

**Instead of**

*A member of the Tribunal may resign **his or her** office...*

*A fisheries officer may issue and register a licence after determining that the applicant has met the licence requirements.*

**Instead of**

*A fisheries officer may issue a licence and **he or she** may register the licence if **he or she** considers that the applicant has met the licence requirements.*

*(No translation is provided for the above examples as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))*

#### **46 Replace the pronoun with “the”, “a”, “that” or “those”**

An article such as “the” or “a”, or a determiner such as “that” or “those”, can sometimes be used to replace the pronoun.

EXAMPLE—

*In accordance with the terms of employment....*

**Instead of**

*In accordance with **his or her** terms of employment...*

The Minister may not appoint a relative to the position of Deputy Minister.

**Instead of**

The Minister may not appoint any of **his or her** relatives to the position of Deputy Minister.

An applicant must include with the application...

**Instead of**

An applicant must include with **his or her** application...

The Commissioner shall advise the complainant in the report under subsection 2.

**Instead of**

The Commissioner shall advise the complainant in **his or her** report under subsection 2.

*(In this case, subsection (2) says that the Commissioner issues the report, so it is not necessary to refer to “his” report).*

*(No translation is provided for the above examples as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see section 39(9))*

#### **47 The “whose” solution**

Occasionally, it will be possible to use the gender-free “whose” to resolve a drafting problem and drop the pronoun.

EXAMPLE—

*This section confers no immediate authority on the auditor, whose powers remain dormant until the occurrence of the contingency.*

**Instead of**

*This section confers no immediate authority on the auditor. **His** powers remain dormant until the occurrence of the contingency.*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))*

#### 48 Use the passive rather than the active voice

- (1) Agentless passive constructions in English may avoid the need for the use of gender-specific pronouns. But those passive constructions may be less clear than their active counterparts and may give rise to ambiguities<sup>11</sup> (see paragraph 28).

EXAMPLE—

*The Secretary of State must submit a memorandum explaining why the order has not been laid...*

**Instead of**

*The Secretary of State must submit a memorandum explaining why **he** has not laid the order...*

- (2) Personal pronouns are not always used in the same way in Welsh and the conversion of active to passive is a solution specific to a problem arising in English.
- (3) In standard literary Welsh, the pronoun is omitted in any case in a neutral (non-emphatic or non-contrastative) statement, e.g. 'ysgrifennodd lythyr' – '[he/she] wrote a letter'. Auxiliary pronouns are used only for emphasis or contrast: 'ysgrifennodd ef lythyr' or 'ysgrifennodd hi lythyr' emphasises that **he** or **she** wrote the letter rather than someone else. For this reason, converting the active to the passive, while useful for English, makes no difference to gender-neutrality in Welsh – 'ysgrifennwyd llythyr' ('a letter was written') is no more gender-neutral than 'ysgrifennodd lythyr – ('[he/she] wrote a letter' ).

#### 49 Use the plural rather than the singular

- (1) While the use of the singular is usually preferred, the plural can be used to avoid a gender-specific pronoun in difficult cases so long as its use does not create ambiguity.

EXAMPLE—

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<sup>11</sup> In the passive construction given in this example, for instance, it is not clear that it is the Secretary of State's failure to lay the order which must be explained.

Occupiers must notify the Authority of any changes in their address.

**Instead of**

An occupier must notify the Authority of any change in **his** address.

Members of the Tribunal may resign their offices...

**Instead of**

A member of the Tribunal may resign **his or her** office...

Borrowers who are not prompt in making payments under their mortgage risk losing their homes.

**Instead of**

A borrower who is not prompt in making payments under **his** mortgage risks losing his home.

- (2) This is one technique that can be helpful in Welsh as well as in English.
- (3) Using the word 'athro' (male teacher) as an example; whilst there is no 'neutral' noun that will cover both the male ('athro') and female ('athrawes') singular in Welsh, the plural of the masculine form 'athro' ('athrawon') is generally accepted to refer to male teachers, male and female teachers, or even female teachers, despite the fact that there is a feminine plural ('athrawesau').
- (4) When dealing with gender-specific nouns like 'athro/athrawes', using the plural (teachers) in the English draft can be helpful, and should be considered where that does not lead to ambiguity.

**50 Use a participle rather than a verb**

EXAMPLE—

A person must record the name of the manufacturer when acquiring any medicinal product.

**Instead of**

A person must record the name of the manufacturer when **he or she** acquires any medicinal product.

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

**51 Use a subordinate clause that operates as an adjective – the ‘who’ solution**

The word “who” is a gender-free pronoun that can be useful in avoiding the need for a reference back either containing a gender-specific pronoun or a repeated noun.

EXAMPLE—

*A person who concludes that exercising a power would assist it to comply with those duties must seek to exercise that power.*

**Instead of**

*If a person concludes that the exercise of a power would assist it to comply with those duties **he or she** must seek to exercise that power.*

*A testator who makes a bequest intending that the beneficiary's own property be disposed in a particular way must make this condition express.*

**Instead of**

*If a testator makes a bequest with the intention that the beneficiary dispose of **his** own property in a particular way, **he** must make this condition express.*

*A person who has obtained a licence may keep a dangerous animal.*

**Instead of**

*If a person obtains a licence, **he** may keep a dangerous animal.*

*A mortgagee who exercises a power to sell mortgaged property may not...*

**Instead of**

*Where a mortgagee exercises a power to sell mortgaged property **he** may not....*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see section 39(9))*

## 52 Use a verb instead of a noun + pronoun

EXAMPLE—

*If satisfied that an application meets the relevant criteria, the Secretary of State must consent to it.*

**Instead of**

*If satisfied that an application meets the relevant criteria, the Secretary of state must give **his** consent to it.*

*The Commissioner may consent...*

**Instead of**

*The Commissioner may give **his** consent....*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))*

## 53 Mention the offence not the offender

EXAMPLE—

*It is an offence to fail to comply with this regulation.*

**Instead of**

*A person commits an offence if **he or she** fails to comply with this regulation.*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 16(3))*

## 54 Using plural pronouns for singular nouns

- (1) Using “they” (and its other grammatical forms: “them”, themselves” and “their”) as a gender-neutral pronoun to refer to a singular noun is possible, but this usage in English is controversial.

EXAMPLE—

*If a person contravenes this regulation, they commit an offence.*

**Instead of**

*If a person contravenes this regulation, **he or she** commits an offence.*

- (2) There are literary precedents for such usage where there is an implied element of plurality (e.g. “anyone” or “a person”), but such usage is probably best avoided.
- (3) This solution may make it more difficult in future to rely on the number of a pronoun to identify clearly what it is referring to. It may be better in this instance to repeat the noun:

EXAMPLE—

*If a person contravenes this regulation, that person commits an offence.*

- (4) In Welsh, the corresponding plural pronoun ‘hwy’ can only refer to plural nouns. This means that even if the English text reads ‘if a chairman decides to retire **they** must inform the Assembly’, the Welsh will need to use the singular masculine pronoun to concord with ‘cadeirydd’ (chairman).

## **55 Dealing with the self-referential “himself”**

- (1) The self-referential word “himself” occurs from time to time, and can be dealt with in a variety of ways.
- (2) In some contexts, “personally” is an acceptable alternative for “himself”.

EXAMPLE—

*Liability will arise even though the owner is not personally guilty of a wrongful act.*

**Instead of**

*Liability will arise even though the owner is guilty of no wrongful act **himself**.*

- (3) Where “himself” is the object of a verb, it may be necessary to use a different form.

EXAMPLE—

*Where there has been a breach the innocent party may be entitled to terminate the contract and be released from further performance of obligations under the contract.*

**Instead of**

*Where there has been a breach the innocent party may be entitled to terminate the contract and release **himself** from further performance of **his** obligations.*

*(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))*

*Gender-specific nouns*

**56 Gender-specific nouns in English**

- (1) Some difficult questions arise about which nouns should be regarded as gender-specific and which should be regarded as gender-neutral.
- (2) In English, generally, words ending in “-man” need to be avoided to secure gender-neutral drafting (unless a particular individual of a certain sex is intended).
- (3) An alternative form of words should be used instead of words like “chairman”, “deputy chairman”, “workman”, “policeman” etc. For “chairman” and “deputy chairman”, the Climate Change Act 2008 uses “chair” and “deputy chair”, but other possible alternatives include “president”, “convenor”, “leading member”, and “principal member”. The precise wording may depend on the context of the enactment.
- (4) Drafters will need to form a view on what constitutes acceptable gender-neutral alternatives, as the use of “-person” (instead of “-man”) as a suffix can also be controversial in some instances.
- (5) English words that don’t end in “-man”, but have alternative feminine forms, e.g. “testator”, “actor”, “manager” can be regarded as gender-neutral despite the existence of alternative female forms (e.g. “testatrix”, “actress” and “manageress”).
- (6) The ending “-ess” should be avoided wherever possible as it is often pejorative, or perceived as such (for example, use “actor” not “actress; “author” not “authoress”).

## 57 Gender-specific nouns in Welsh

- (1) Similar to English, some nouns in Welsh take a form that appears to assume that a man rather than a woman will hold a particular office.
- (2) Whilst some of the most problematic nouns in English often have the suffix '-man', in Welsh the most problematic end in '-wr' (from the word 'gŵr', meaning 'man'), e.g. 'cyfarwyddwr' (director), or are compounds of 'dyn' (man), e.g. 'dyn tân' (fireman).
- (3) In Welsh, many of the nouns referring to jobs, roles, positions etc. have masculine and feminine forms (e.g. 'athro' and 'athrawes' for 'teacher'). The noun suffixes (or head noun in compounds) denote which form denotes which sex.
- (4) Although many job titles have masculine and feminine forms, job titles are not usually sex-specific, with the exception of 'athro' (male teacher) and 'athrawes' (female teacher), as the 'masculine' form can be used for both male and female in most cases. As mentioned above, in the case of 'athro/athrawes', using the plural can be useful.

## 58 Welsh nouns ending in '-wr' (man) and '-wraig' (woman)

- (1) Where a noun in Welsh is formed by adding a suffix to a noun or verb stem, the grammatical gender of the noun is governed by the grammatical gender of the suffix. The most common personal suffixes are '-wr' and '-ydd' (although there are others, such as '-yn', '-adur' and '-or'). The ones just quoted are masculine, but it is possible to form corresponding suffixes which have a feminine grammatical gender, being '-wraig', '-yddes', '-en', '-dures' and '-ores'.
- (2) Nouns ending in '-wr' in particular raise questions of gender-neutrality because they often have a corresponding female form ending in '-wraig' and may therefore be constructed as referring to males only. A list of some examples is contained in the following table.

arbenigwr	arbenigwraig	specialist
cyfarwyddwr	cyfarwyddwraig	director (directrix, directress)
cyfreithiwr	cyfreithwraig	lawyer
cynorthwywr	cynorthwywraig	assistant
gweinyddwr	gweinyddwraig	administrator (administratrix)
gweithiwr	gweithwraig	worker
gofalwr	gofalwraig	carer

hyfforddwr	hyfforddwraig	trainer
myfyriwr	myfyrwraig	student
newyddiadurwr	newyddiadurwraig	journalist, reporter
rheolwr	rheolwraig	manager (manageress)

- (3) This is where the confusion may arise. Although the feminine suffixes mentioned above are invariably used to create nouns which refer specifically to the female sex, it does not follow that the masculine forms refer specifically to those of the male sex. Rather, it is often a case of the masculine forms being the basic forms, and the feminine forms being variations on them.

## 59 Welsh nouns with '-ydd' suffixes

- (1) Even though nouns ending in '-ydd' are masculine in grammatical gender and a corresponding feminine form may be created by adding '-es', they are generally perceived to be more gender neutral<sup>12</sup>.
- (2) This supposition seems to have arisen because while 'gŵr' corresponds to 'man', 'married man' or 'adult male' (whereas 'gwraig' corresponds to 'woman', 'married woman', 'adult female'), the suffixes '-ydd' and '-yddes' have no related status as independent words, and are therefore considered more neutral. A list of some of the more common forms of '-ydd' nouns are set out in the following table.

cydlynnydd	co-ordinator
cyfieithydd	translator
cyfrifydd	accountant
cynhyrchydd	producer
derbynnydd	receptionist; receiver
dylunydd	designer
gohebydd	correspondent; reporter
golygydd	editor

<sup>12</sup> See Equal Opportunities Commission, *Advertising Jobs in Welsh*, p. 2.

goruchwilydd	supervisor
llyfrgellydd	librarian
peiriannydd	engineer
rhaglennydd	programmer
seicolegydd	psychologist
trefnydd	organizer
ymchwilydd	researcher
ymgyngorydd	consultant

- (3) Although there is no such thing as a Welsh gender-free noun, the Equal Opportunities Commission has in the past objected to the use of job titles rendered in Welsh with the masculine suffix '-wr' without the corresponding feminine '-wraig' form, suggesting instead the supposedly more neutral '-ydd'. This seems to follow the attempt to search for alternatives for '-man' endings in English, but a rule that works for one language can't necessarily be transposed to another.
- (4) There are difficulties surrounding any attempt to prescribe the suffix '-ydd' rather than '-wr' for nouns which are job titles on grounds that '-wr' is 'more male' than '-ydd'.
- (5) '-wr and '-ydd' and their related feminine and plural forms are so closely related that they can form morphologically mixed pairs or sets. For example, the singular 'ymwelydd' (visitor) and 'peiriannydd' (engineer) give us the plural forms 'ymwelwyr' and 'peirianwyr', and there are many more similar examples.
- (6) There are also examples where one finds both '-wr' and '-ydd' forms added to the same root word, but where the words are not interchangeable, since they have slightly different meanings.

EXAMPLE—

'ysgrifennydd' means 'secretary', but 'ysgrifennwr' means 'writer';

'cynghorydd' means 'councillor', but 'cynghorwr' means 'counsellor';

'rheolwr' or 'rheolwraig' means 'manager', but 'rheolydd' means 'control, regulator', i.e. a device which regulates things.

This emphasises the point that it is not always possible to search for feasible, supposedly gender-neutral alternatives, to '-wr' endings in Welsh.

(7) Nouns ending in '-ydd' may also have corresponding female forms.

EXAMPLE—

By adding '-es':

<i>Cadeirydd</i>	(chairman)
<i>Cadeiryddes</i>	(chairwoman)
<i>Trysorydd</i>	(treasurer (male))
<i>Trysoryddes</i>	(treasurer (female))

(8) The female form may be irregular, using the suffix '-wraig':

EXAMPLE—

<i>Darlithydd</i>	(lecturer (male))
<i>Darlithwraig</i>	(lecturer (female))
<i>Cyfieithydd</i>	(translator (male))
<i>Cyfieithwraig</i>	(translator (female))

(9) The female '-es' suffix may also be attached to a number of other male noun suffixes to make female alternatives.

EXAMPLE—

	<u>masculine</u>	<u>feminine</u>
-adur	<i>cofiadur</i> (recorder)	<i>cofiadures</i>
-mon	<i>plismon</i> (policeman)	<i>plismones</i>
-or	<i>actor</i> (actor)	<i>actores</i>
-ych	<i>eurych</i> (goldsmith)	<i>euryches</i>

## 60 Welsh nouns: use of pairs

- (1) As should now be clear, Welsh nouns often come in gender-specific pairs.
- (2) Whilst it would appear possible to use pairs of both feminine and masculine nouns to answer the gender-neutral question, this causes problems in itself.
- (3) A noun's gender in Welsh has other grammatical repercussions apart from classifying it as a "he" or a "she". Most importantly, it causes mutations to other words in the sentence.

- (4) Mutations vary according to the gender of the noun (rather than the sex of the person alluded to). In Welsh, you would say '*mae John yn nyrs dda*' (John is a good nurse), where the adjective '*da*' (good) is mutated to '*dda*' following the feminine noun '*nyrs*'. It makes no difference that the nurse in question is male.
- (5) Using pairs of feminine and masculine nouns would mean that pairs of male and female pronouns (*ef/hi, ganddo ef/ganddi hi*) would be needed, as well as the corresponding mutation alternatives. This would result in unnatural, cumbersome drafting, and should be avoided.
- (6) Another problem with the use of pairs is that it isn't always possible to do so in a consistent and unambiguous manner because there are sometimes variations in meaning between morphologically related forms.
- (7) For instance '*ysgrifennydd*' means 'secretary', is masculine in gender and is used of males and females in official roles with societies or Government departments. The corresponding feminine form '*ysgrifenyddes*' on the other hand is used only of females, and means an office assistant.
- (8) Because '*ysgrifenyddes*' is so obviously gender-specific, it is preferable to use other titles such as 'personal assistant' in English so that a more gender-neutral term can be used in Welsh, such as '*cynorthwydd personol*'.
- (9) Even where there are no such precise meanings to the variations in form, the feminine forms often carry connotations of inferiority. For example, '*rheolwr*' means 'manager' and may be used for both males and females. The feminine variant '*rheolwraig*' (corresponding to 'manageress'), on the other hand, refers exclusively to females and is perceived by some speakers as suggesting lower status.<sup>13</sup>
- (10) This is true of many '-yddes' endings, and the development of using '-wraig/-yddes' endings in an effort to be gender neutral has been criticised by some as seeming to demote particular professions. The perceived pejorative and sexist connotations of some feminine endings in Welsh bear a similarity to some feminine endings which are criticised in English, such as "authoress", "poetess", "usherette" etc.
- (11) The use of word pairs like '*athro/athrawes*' in Welsh should be avoided if possible. Plural forms can be used where appropriate if that assists (so long as they do not create ambiguity).
- (12) Alternatively, if it is possible to choose another word that does not raise such obvious gender connotations, then that should be substituted. For example, '*pennaeth*' (head) can be used instead of '*prifathro/prifathrawes*' (head teacher).

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<sup>13</sup> D. Prys, "Gender and Sex in Welsh Nouns", *Planet* 121, p. 90.

- (13) As in the Learning and Skills (Wales) Measure 2009, this can be expanded if dealing specifically with a head teacher of a school or principal of an institution: '*pennaeth ysgol*' (head teacher of a school) '*pennaeth sefydliad*' (principal of a higher education institution).

## 61 Welsh nouns: neologisms

- (1) Linguistic techniques that may work in English cannot be transferred wholesale into Welsh. The answer, it seems, is that rather than devise new supposedly egalitarian female '-wraig' endings, or supposedly neutral '-ydd' endings, for job titles in Welsh, the message needs to be reinforced that both '-wr' and '-ydd' endings (and indeed any other job title with a masculine grammatical gender) may apply equally to both men and women. Grammatical gender is not tied to the sex of the person.
- (2) The general policy is to use terms which are well-established rather than to coin new terms to meet the needs of gender-neutrality.
- (3) As a rule, following the line given in the Welsh Academy English-Welsh dictionary, the suffix '-ydd' should not be used unless it occurs naturally, and strained constructions such as *cyfarwyddwr/wraig* should also be avoided. Not every case is black and white though, and there may be more than one possibility in Welsh.
- (4) There are occasions when there may be no well-established Welsh term corresponding to an English one, an existing Welsh term may be poorly attested, or a noun ending in '-ydd' may be as well established as its '-wr' counterpart. In such circumstances an existing term can be set aside in favour of a better one, or a completely new term may be created. In such situations, nouns ending in '-ydd' should be favoured over nouns ending in '-wr'.

### EXAMPLE—

The term 'adopter', '*mabwysiadwr*' exists, but is poorly attested historically. The opportunity was therefore taken to use the term '*mabwysiadydd*'.

## 62 Nouns with only one form for both sexes

There are a number of job-titles in Welsh which have only one form for both sexes. These nouns are usually (but not always) masculine in grammatical gender, but may refer to males or females. Generally,

they do not raise any gender-neutrality issues, and no new words need be coined.

*EXAMPLE—*

<i>Mecanic (m)</i>	mechanic
<i>Meddyg</i> <sup>14</sup> <i>(m)</i>	doctor
<i>Nyrs (f)</i>	nurse
<i>Bydwraig (f)</i>	midwife
<i>Pennaeth(m)</i>	head
<i>Pensaer (m)</i>	architect
<i>Porthor (m)</i>	porter
<i>Saer (m)</i>	carpenter
<i>Swyddog (m)</i>	officer
<i>Tiwtor (m)</i>	tutor
<i>Warden (m)</i>	warden

*Exceptions and difficulties*

**63 Amending existing Acts**

- (1) A difficulty occurs when amending Acts or subordinate legislation which is drafted in a way that is not gender neutral.
- (2) Although it may be possible to use gender-neutral techniques to frame textual amendments to provisions that were originally framed in gender-specific terms, there are clearly going to be cases in which that will not be possible. Sometimes it would be necessary to rewrite a provision from scratch in order to make a very minor amendment in gender-neutral terms, and that could create handling problems, as well as obscuring the real purpose of the amendment.
- (3) Careful consideration is needed where amendments are made to instruments that were not drafted in gender-neutral terms. If, for example, the instrument being amended uses “chairman”, the drafter will need to amend the original instrument so that all references to

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<sup>14</sup> The female form ‘meddyges’ exists, but tends to refer to a female healer or herbalist rather than a doctor of medicine.

“chairman” are replaced by a gender-neutral alternative). But if it is not practical to make wholesale changes of this kind, drafters should not use “chair” in the amendment and leave “chairman” in the principal instrument without doing something to clarify the position for the reader of the consolidated amended text; for example, by inserting a provision to make clear that the references to “chair” and “chairman” are to be interpreted as meaning the same thing.

#### **64 Gender-specific enactments**

There will be some instances where gender-specific drafting will remain appropriate (e.g. in enactments about marriage or divorce).<sup>15</sup>

#### **65 The Monarch**

Drafters should continue to refer in gender-specific terms to the monarch according to the gender of the current monarch.

#### **66 First Minister, Counsel General, Secretary of State and other office holders**

References to the First Minister, Counsel General, Secretary of State and other office holders should not follow the gender of the current office holder.

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<sup>15</sup> Although difficult questions may arise where provisions about marriage have been applied to civil partnerships.

## PART 6

### DRAFTING TECHNIQUES

#### CHAPTER 1

##### PARAGRAPHING

### 67 Introduction

- (1) An obvious way of making a sentence more digestible is to separate the text out into numbered paragraphs. But drafters should be careful not to overdo paragraphing. Just because text can be turned into paragraphs doesn't mean it has to be. In some cases it may be better to have continuous text, and not to separate out the items at all.
- (2) This chapter gives technical guidance about paragraphs<sup>16</sup>.

### 68 Two sets of paragraphs

- (1) Do not put two or more sets of paragraphs in the same sentence (eg in the same subsection).

*EXAMPLE (to avoid)—*

*If the Welsh ministers consider that –*

*(a) the authority is not likely to achieve the target, or*

*(b) the authority is not likely to achieve the target in a reasonable time,*

*the Welsh minister may after consulting the authority.*

*(c) revise the target, or*

*(d) require the authority to explain.*

- (2) Instead, split the proposition into two so that there is one series in each paragraph.

### 69 “Sandwiches”

- (1) The following structure is a sandwich—

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<sup>16</sup> Generally on paragraphs, see G.C. Thornton, *Legislative Drafting* (see chapter 7.1), pp.61-65, 95-97 and D. Greenberg, *Craies on Legislation* (see chapter 7.1) paras 8.2.11 and 13. Some of the material contained in this chapter reflects material to be found in some of those passages.

(2) EXAMPLE—

*If an inspector reasonably believes that -*

- (a) premises falling within this Part are unfit for human occupation,*
- (b) they are nevertheless occupied, and*
- (c) the life or health of the occupants is at risk,*

*the inspector may serve a notice under this section.*

- (3) This structure can impede understanding, especially if the main proposition is relegated to the end (as in the example above). It is often possible to move the proposition in the full-out words at the end so that it appears in the opening words, and usually the result is easier to understand. Instead of the text above, you could say this—

*An inspector may serve a notice under this section if the inspector reasonably believes that—*

- (a) premises falling within this Part are unfit for human occupation,*
- (b) they are nevertheless occupied, and*
- (c) the life or health of the occupants is at risk.*

## **70 Conjunctions**

- (1) Ensure that it is clear whether the paragraphs are intended to operate cumulatively or instead as alternatives.
- (2) There should not be a mixture of conjunctions, i.e. different conjunctions at the ends of different paragraphs in the same provision.

### *Cumulative or alternative paragraphs*

- (3) Where a provision is paragraphed, the intention may be that the paragraphs are to operate cumulatively, or instead it may be that they are to operate as alternatives. In either case, it is up to the drafter to ensure that the intention is readily apparent to the reader.
- (4) So far as “or” is concerned, the drafter is confronted with the linguistic problem that “or” can have both an inclusive sense (i.e. a reference to A or B means A or B or both) and an exclusive one (i.e. a reference to A or B means A or B but not both) (the position in Welsh is different - see the entry for “or/neu/ynteu” in section 30). Dickerson<sup>17</sup> suggests that: “Observation of legal usage suggests that in most cases “or” is used in

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<sup>17</sup> F. Reed Dickerson *Fundamentals of Legal Drafting* (see chapter 7.1) p.77.

the inclusive rather than the exclusive sense". This construction may be bolstered, or alternatively excluded, by the context.

#### EXAMPLE

*Where an animal is taken into possession, a magistrates' court may order-*

- (a) that specified treatment be administered to the animal, or*
- (b) that the animal be sold or destroyed.*

It seems unlikely the court should have to choose between (a) and (b). So the "or" at the end of (a) should probably be read in an inclusive sense.

On the other hand, in (b), it would make no sense for the court to order both sale and destruction, so "or" should no doubt be read in an exclusive sense.

- (5) It may be tempting to omit "or" from provisions in order to avoid any suggestion of exclusivity and perhaps to make it clear from the opening words what is intended. But where it is obvious from the context that the provisions would be read in an inclusive sense, it may be better from the point of view of clarity or consistency across the statute book to follow normal English and use "or".
- (6) Sometimes it will be desirable to spell out that both of two alternatives are a permissible option. For example, a provision allowing the imposition merely of a "fine or a term of imprisonment" might be construed in favour of a defendant so as to exclude the imposition of both. So if both may be wanted, it is probably best to say so.
- (7) Similar issues can arise with "and". If, in the example above, the court were given power to order that treatment be given to the animal *and* that it be sold or destroyed, would it have to do both? Again, though, the context will probably supply the answer.

#### *Use of single conjunction*

- (8) Often it will be sufficient to put the appropriate conjunction at the end of the penultimate paragraph and rely on the implication (in the absence of a contrary indication) that each of the preceding paragraphs is separated by the same conjunction.
- (9) However, if the "and" or "or" appears only at the end of the penultimate paragraph, the reader has to wait until then to know whether the paragraphs are cumulative or alternative. This is may be unhelpful with a long list of paragraphs.

- (10) It is of course possible to say “and” or “or” at the end of each paragraph. That can however be cumbersome.

*No conjunction*

- (11) It is also possible to avoid a single conjunction by making it clear in the opening words whether the paragraphs are cumulative or alternative.

EXAMPLE

*A person who applies for a licence must send with the application a copy of [all] [at least one] of the following documents—*

- (a) the person's birth certificate;*
- (b) the person's passport;*
- (c) the person's driving licence.*

- (12) This can be heavy-handed in simple propositions, when “and” or “or” may be better.
- (13) For specific heads of vires, the conjunction is often omitted. It is also common practice not to expand the opening words so as to refer to “any or all of the following”, but instead to rely on the context to supply the right answer.

EXAMPLE

The Welsh Ministers may by order make provision about—

- (a) the form of an application;*
- (b) the procedure for making an application;*
- (c) the fee to be paid by an applicant.*

In this example, it seems sufficiently clear that the Welsh Ministers may make provision about any or all of the things mentioned.

## **71 Punctuation**

- (1) In the case of a simple list of paragraphs linked by a conjunction, commas or semi-colons may be used.

- (2) If the paragraphs are followed by full-out text that is effectively a continuation of the proposition contained in the text preceding the paragraphs, commas should be used, not semi-colons (see the example of a "sandwich" above).
- (3) Semi-colons may be more appropriate than commas where there is no conjunction (i.e. where the paragraphs are in effect a list setting out matters that have no particular affinity with each other - see the examples above).

## **72 Repeals and amendments**

- (1) If you are repealing a paragraph which ends with a conjunction, it needs to be clear whether or not you are repealing the conjunction.
- (2) In cases where the conjunction's fate would not otherwise be sufficiently clear, clarify the position by adding words such as "(together with the "and" following it)" or "(but not the "or" following it)".

## **73 Unnumbered paragraphs (lists)**

Paragraphs need not have numbers or letters. A list of things may be sometimes usefully displayed as paragraphs without numbers or letters, especially if the list is not too long and the entries are relatively short. This may also be a good idea if the list is likely to be amended frequently.

### *EXAMPLE*

*In this section "award for bravery" means -  
the Victoria Cross,  
the George Cross,  
the Albert Medal,  
the Edward Medal, [etc.]*<sup>18</sup>

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<sup>18</sup> Income Tax (Earnings and Pensions) Act 2003, section 638(2).

## CHAPTER 2

### DEFINITIONS

#### 74 Kinds of definition

(1) Definitions are broadly of four kinds—

- (a) Definitions of major concepts without which the reader cannot understand what follows.

*EXAMPLE*

*In the Animal Welfare Act 2006, what is meant by “animal” (section 1) and “protected animal” (section 2).*

- (b) Definitions adopted for the sake of drafting convenience.

*EXAMPLE*

*In this Act, “the 2002 Act” means the Enterprise Act 2002.*

Definitions of this kind should be kept to a minimum. They are likely to be less convenient to the reader than to the drafter.

- (c) Definitions of words or expressions which will be understood in general terms, but where a degree of certainty or clarification is needed.

*EXAMPLES*

*In this Act, “child” means a person under the age of 18.*

*In this Act, “enactment” includes an enactment comprised in subordinate legislation.*

- (d) Definitions making, for convenience, a minor adjustment of what a word or phrase would otherwise mean.

*EXAMPLE*

*In this Act, “employment” includes self-employment.*

This kind of definition should also be used sparingly.

#### 75 Where to put definitions - Bills

(1) Where the defined term is used only once, the definition should appear in the same provision (eg the same section).

(2) Where the defined term is used more than once—

- (a) a definition of the first and second kind referred to above should normally be defined up front, as the reader will not understand what is being said. So it should appear either in the first place where the defined term appears or, if more convenient, in an introductory definitions provision.

- (b) a definition of the third kind referred to above can usually be left to the end;
  - (c) a definition of the fourth kind referred to above can also usually be left to the end, unless there is a danger of the reader being seriously misled.
  - (d) Definitions which are given up front should be indexed so that the reader can see in one place whether the term is defined or not. This does not apply if the defined term is used only once.
- (3) A traditional interpretation section therefore includes—
- (a) index entries for definitions that have already been given (eg “In this Part, x has the meaning given in section 1”), and
  - (b) minor definitions of the third and fourth kinds referred to above.
- (4) Avoid prospective definition: “In this section and the next section, x means y”. The reader of the next section may not see the definition. If necessary, repeat the definition.

## **76 Where to put definitions – statutory instruments**

- (1) The long standing practice for statutory instruments is for the general interpretation provision to appear near the beginning of the instrument rather than the end as in the case of Acts.
- (2) It seems that the difference in approach between primary and secondary legislation in the UK has arisen principally because of Parliamentary procedure in the consideration of amendments to bills. Opinion differs as to the relative merits of general interpretation provisions appearing at the start or at the end. Some consider it a distraction to the main story to have every kind of definition no matter how trivial listed at the start. Others argue that this is a more efficient way for readers to locate definitions<sup>19</sup>. Whatever the relative merits of the different approaches most users of UK legislation will be familiar with the usual location of general interpretation provisions in primary and secondary legislation, so the practice should continue of placing the general interpretation provisions at the start of statutory instruments.
- (3) Although all defined terms appear in a list near the start, drafters may still find that as a matter of drafting it is easiest to introduce and define a concept in a substantive article or regulation. Regulation Y might introduce and define the concept and if that concept is used elsewhere in the regulations the interpretation provision would say “X has the meaning given in regulation Y” / “mae i X yr ystyr a roddir iddo yn rheoliad Y”. Also where a definition is long or complex the interpretation provision could again cross refer to a later provision e.g.

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<sup>19</sup> Thornton, *Legislative Drafting*, 4<sup>th</sup> edition at page 192.

"X has the meaning given in regulation Y" "mae i X yr ystyr a roddir iddo yn rheoliad Y".

- (4) Where a defined term is used only once, the definition should appear in the same provision (e.g. the same regulation).

## **77 Choice of label**

- (1) Avoid labels which are misleading (and, conversely, do not give defined terms a meaning the reader would not expect).

*EXAMPLE (to avoid)*

*In this Act, references to fingerprints include footprints.*

- (2) A defined term should ideally in itself give the reader some clue as to what it means.

*EXAMPLE*

*"PACE" or "the 1984 Act" would be a better label for the Police and Criminal Evidence Act 1984 than "the principal Act".*

- (3) Equally, colourless terms such as "the relevant person" should where possible be replaced with something more helpful.
- (4) Using the same label to denote different things in the same piece of legislation may confuse.

## **78 Operative provision in definitions**

It is considered bad practice to include operative material in a definition. For example, it may be permissible to say that "regulations" means regulations made by the Welsh Ministers, but it would be going too far to include the Assembly procedure in the definition.

## **79 Definitions involving cross-references**

- (1) If legislation is to use a term which has already been defined in the way desired in other legislation, it may be useful to borrow the definition from that other legislation.
- (2) There are at least two ways of doing this—

*EXAMPLES—*

*In this Act, "health care" has the same meaning as in the Health Act 2006 (see section 98).*

*In this Act, "health care" has the meaning given by section 98 of the Health Act 2006.*

- (3) The first approach may be the only possible one where the meaning of the word or phrase in the earlier Act is not given in a single place but has to be constructed from a number of different provisions. This approach may also be better if the definition has been elaborated on by case law which you want to attract.
- (4) In other cases, the second formulation may be better as more concise. But consider then whether it would not be even better just to copy the definition out.
- (5) If the Welsh text of legislation cross-refers to a definition found in an English-only legislative text, the way to do this is to refer to the English definition in the Welsh text.

EXAMPLE—

*Yn y Ddeddf hon, mae i “gofal iechyd” yr un ystyr â “health care” yn Neddf Iechyd 2006 (gweler adran 98).*

## **80 Lists of definitions**

- (1) In some cases it may make sense to list definitions in conceptual order (e.g. where each definition builds on the previous one).
- (2) In most cases, though, definitions should be listed alphabetically. The English definitions are ordered according to the English alphabet and the Welsh definitions according to the Welsh alphabet. In the Welsh definitions, the definite article (“y” or “yr”) is ignored but prepositions are counted. Definitions beginning with numbers (e.g. in English “the 2002 Act” means the Enterprise Act 2002”) should appear first in numerical order. The corresponding Welsh definition would be ‘ystyr “Deddf 2002” yw Deddf Menter 2002’ and should therefore listed under ‘d’.
- (3) In a list of definitions, each entry should end with a semi-colon. There should be no conjunction.
- (4) The defined term in the English version of the text should also include the Welsh defined term in italics like this—  
“local authority” (“*awdurdod lleol*”) means.....
- (5) Similarly, the defined term in the Welsh version should have the English alongside in italics. The reason for doing this is to facilitate comparison of text between the language versions. The definitions are likely to appear in a different order in each language.
- (6) This should not be done for single definitions or lists of definitions that are not ordered alphabetically.

## **81 Other technical points**

- (1) “Unless the context otherwise requires” / “oni bai bod y cyd-destun yn mynnu fel arall” is not particularly helpful. Do not use it at all if there is no case where the context does otherwise require - and in such a case, it may be better to say what is meant in that context.
- (2) Some writers deplore the use of a definition to use a term which is used only in another definition, unless that is the only way to make the other definition manageable.
- (3) It should be clear to which portion of the resulting legislation the definition will apply: so use “in this Act” / “yn y Ddeddf hon” , “in this section” / “yn yr adran hon” and so on unless there is no possible doubt.
- (4) In most cases it is not obvious that “for the purposes of this Act, x means y” / “at ddibenion y Ddeddf hon, ystyr x yw y” has any particular advantage over “In this Act, x means y” / “Yn y Ddeddf hon, ystyr x yw y”.

## **82 Indexes**

Many Acts now contain an index of defined expressions. These can be helpful if the Act contains a large number of them.

## CHAPTER 3

### CROSS-REFERENCES

#### 83 Use of cross-references

- (1) Cross-references can prove particularly hard work for the reader, so it is helpful to minimise their use. This can sometimes be done by re-ordering the material.
- (2) Generally, it is helpful to refer to a substantive rule or proposition, rather than the statutory provision containing it (in which readers are unlikely to be interested).

#### EXAMPLE

Suppose subsection (1) says—

*(1) A company must pass a resolution before [doing something].*

*(1) Rhaid i gwmni basio penderfyniad cyn [gwneud rhywbeth].*

An exception is wanted for small companies.

The provision could say—

*(2) Subsection (1) does not apply in the case of a small company.*

*(2) Nid yw is-adran (1) yn gymwys yn achos cwmni bach.*

But rather than telling readers about “subsection (1)”, it might be more helpful to say—

*(2) No resolution is required in the case of a small company.*

*(2) Nid oes angen penderfyniad yn achos cwmni bach.*

- (3) If a cross-reference is absolutely necessary, it may be possible to make it more user-friendly by adding words describing the effect of the provision referred to.

#### 84 Parenthetical descriptions

- (1) It will generally be helpful to provide a parenthetical description of a provision referred to. But the drafter will need to consider the usefulness of the descriptive words against the disadvantage of interrupting the flow of text. There is usually less need to give a parenthetical description of a cross-reference to a provision of the same Bill.
- (2) The parenthetical description is a description, not a quotation. It will often be the heading of the section or Schedule referred to, but it does not have to be. For example, the heading may have been devised in

the context of other headings in the Act in question, but may not be particularly helpful taken in isolation.

- (3) It should be made clear whether the parenthetical description relates to a particular subsection or other portion of text, or whether it relates to the section generally. In the latter case, it may be helpful to use a formulation along the following lines:

EXAMPLE

*In section 1 (description of section 1), in subsection (1)...*

*Yn adran 1 (dsigrifiad o adran 1), yn is-adran (1)...*

instead of

*In section 1(1) (description of section 1).....*

*Yn adran 1(1) (dsigrifiad o adran 1)...*

## **85 Cross references**

- (1) If something is expressed as being “subject to” / “yn ddarostyngedig i” something else, the relationship between them may not be immediately easy to grasp. In particular, this may be true if “subject to”/ “yn ddarostyngedig i” occurs at the beginning of the sentence. Another arrangement would often be better, for example adding a proposition at the end, such as “but this is subject to section X” / “ond mae hyn yn ddarostyngedig i adran X”.
- (2) It may also be possible to use another expression: for example, “but see section X” “ond gweler adran X” may be sufficient, or it may be possible to state briefly the case to which a different rule applies by saying (for example) “except” “ac eithrio” or “unless” “oni bai” “ (as in “*Unless the person concerned is under 30*” “*Oni bai bod y person dan sylw o dan 30 oed*”).
- (3) Global cross-references such as “Subject to the provisions of the Corporation Tax Acts” “Yn ddarostyngedig i ddarpariaethau Deddfau'r Dreth Gorfforaethau” (s.7(2) ICTA 1988) are meaningless to all but the most expert reader. In such cases, if the reference cannot be avoided, try to include a list of where the relevant other provision is made.

## CHAPTER 4

### WORDS INTRODUCING SCHEDULES

#### 86 Need for introductory words

- (1) This chapter is about the wording used to introduce a Schedule which consists of freestanding legislative propositions (for example, a Schedule of amendments to other Acts).
- (2) This chapter is therefore not concerned with—
  - cases where the Schedule is a continuation of a legislative proposition in the body of the Bill, such as a list or table (an obvious example is a repeals Schedule, which is just a list of enactments referred to in the section giving effect to the repeals); or
  - cases where the Schedule is not part of a legislative proposition at all and is merely there for information (e.g. an index or the text of a treaty).
- (3) Where a piece of legislation contains a free-standing Schedule, it is the invariable practice to introduce it in one of the sections, articles or regulations of the document (either the section to which it most closely relates or, if it does not relate to any other section, in a new one).
- (4) The function of the words introducing a free-standing Schedule is to provide a signpost to the existence of the Schedule and an indication of its contents.

#### 87 Possible formulations

- (1) A commonly-used formula to introduce a Schedule is to say something along the following lines—

*Schedule 3 ([brief description of Schedule contents]) has effect.*

*Mae Atodlen 3 (disgrifiad cryno o gynnwys yr Atodlenni) yn cael effaith.*
- (2) This formula certainly fulfils the functions referred to above. It is not though strictly necessary to say that the Schedule “has effect” “cael effaith”. It has effect whether the provision says so or not.
- (3) There are other ways of introducing a Schedule which equally perform the functions referred to above.

#### EXAMPLES

*Schedule 1 makes further provision about the Senior President of Tribunals....*

*Mae Atodlen 1 yn gwneud darpariaeth bellach am Uwch Lywydd y Tribiwnlysoedd.*

*Schedule 1 contains amendments of Schedule 16 to the 1999 Act (the London free travel scheme)*

*Mae Atodlen 1 yn cynnwys diwygiadau I Atodlen 16 i Ddeddf 1999 (cynllun teithio am ddim yn Llundain)*

*Schedule 5 amends the Environmental Protection Act 1990 to provide for the making of waste reduction schemes.*

*Mae Atodlen 5 yn diwygio Deddf Diogelu'r Amgylchedd 1990 i ddarparu am wneud cynlluniau lleihau gwastraff.*

- (4) Another recently used technique, which very clearly expresses the function of inducing words as a signpost, is to adopt a "see" formula.

EXAMPLE

*For provision about alterations in the Assembly electoral regions and in the allocation of seats to those regions see Schedule 1 (section 2(5) of the Government of Wales Act 2006)*

*Am ddarpariaeth am newidiadau yn rhanbarthau etholiadol y Cynulliad a dyraniad seddau i'r rhanbarthau hynny gweler Atodlen 1 (adran 2(5) o Ddeddf Llywodraeth Cymru 2006).*

- (5) All of these techniques, and other forms of words which fulfil the functions mentioned above, are acceptable.
- (6) It is important to ensure that the description of the Schedule is accurate and covers everything in the Schedule.

## CHAPTER 5

### ALTERNATIVE STRUCTURES TO CONVEY THE MESSAGE

#### 88 Tables

A table is often a neat and clear way of setting out a number of cases with the rule that applies to each of them: see, for example, section 9 of the Learner Travel (Wales) Measure 2008:

**“9 Learner travel arrangements not to favour certain types of education or training**

- (1) This section applies if arrangements under section 3, 4, or 6 are made in respect of learners of a description set out in an entry in column 1 of the following table.
- (2) Arrangements must also be made in accordance with those sections in respect of the learners of the description set out in the corresponding entry in column 2 of the table.
- (3) The arrangements referred to in subsection (2) must be no less favourable than the arrangements referred to in subsection (1).

**TABLE**

<b>Column 1</b>	<b>Column 2</b>
<i>Children of compulsory school age receiving education or training at maintained schools.</i>	<i>Children of the same age receiving education or training at other relevant places.</i>
<i>Learners over compulsory school age receiving full-time education or training at maintained schools.</i>	<i>Learners of the same age receiving full-time education or training at other relevant places.</i>
<i>Learners with learning difficulties receiving education or training at maintained schools.</i>	<i>Learners of the same age with learning difficulties receiving education or training at other relevant places.</i>
<i>Learners who have a disability receiving education or training at maintained schools.</i>	<i>Learners of the same age who have a disability receiving education or training at other relevant places.</i>
<i>Children looked after by a local authority receiving education or training at maintained schools.</i>	<i>Children of the same age who are looked after by a local authority receiving education or training at other relevant places.</i>

**9 Trefniadau teithio i ddysgwyr a'r rheini'n drefniadau nad ydynt i ffafrio mathau penodol o addysg neu hyfforddiant**

- (1) Mae'r adran hon yn gymwys os gwneir trefniadau o dan adran 3, adran 4 neu adran 6 mewn cysylltiad â dysgwyr o fath a ddisgrifir mewn cofnod yng ngholofn 1 y tabl a ganlyn.
- (2) Rhaid gwneud trefniadau hefyd yn unol â'r adrannau hynny mewn cysylltiad â'r dysgwyr o fath a ddisgrifir yn y cofnod cyfatebol yng ngholofn 2 y tabl.
- (3) Rhaid i'r trefniadau y cyfeirir atynt yn is-adran (2) beidio â bod yn llai ffafriol na'r trefniadau y cyfeirir atynt yn is-adran (1).

**TABL**

<b>Colofn 1</b>	<b>Colofn 2</b>
<i>Plant o oedran ysgol gorfodol sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i>	<i>Plant yr un oed sy'n cael addysg neu hyfforddiant mewn manau perthnasol eraill.</i>
<i>Dysgwyr sydd dros yr oedran ysgol gorfodol ac sy'n cael addysg lawnamser neu hyfforddiant llawnamser mewn ysgolion a gynhelir.</i>	<i>Dysgwyr yr un oed sy'n cael addysg lawnamser neu hyfforddiant llawnamser mewn manau perthnasol eraill.</i>
<i>Dysgwyr a chanddynt anawsterau dysgu sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i>	<i>Dysgwyr yr un oed a chanddynt anawsterau dysgu sy'n cael addysg neu hyfforddiant mewn manau perthnasol eraill.</i>
<i>Dysgwyr a chanddynt anabledd sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i>	<i>Dysgwyr yr un oed a chanddynt anabledd sy'n cael addysg neu hyfforddiant mewn manau perthnasol eraill.</i>
<i>Plant sy'n derbyn gofal gan awdurdod lleol ac sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i>	<i>Plant yr un oed sy'n derbyn gofal gan awdurdod lleol ac sy'n cael addysg neu hyfforddiant mewn manau</i>

**89 Formulae**

- (1) These are perfectly acceptable when used appropriately. A formula may be the neatest way to express a relationship between various quantities; spelling the same thing out in words may be the worst way of expressing it.

*EXAMPLE*

*An example of a formula is in section 998(3) of the Income Tax Act 2007 (meaning of “grossing up”)-*

- “(3) The grossed up amount may also be expressed as-

$$GA = NA + \left( NA \times \frac{R}{100 - R} \right)$$

where

GA is the grossed up amount,

NA is the net amount, and

R is the percentage rate of tax by reference to which the net amount is to be grossed up.”

- “(3) Gellir hefyd fynegi'r swm wedi ei grosio fel a ganlyn-

$$GA = NA + \left( NA \times \frac{R}{100 - R} \right)$$

ystyr

GA yw'r swm wedi ei grosio,

NA yw'r swm net, ac

R yw graddfa canran y dreth drwy gyfeirio at y swm net sydd i'w grosio.”

- (2) However, a sequence of written instructions may sometimes be more accessible than a formula: see, for example, the "method statement" in section 90 of the Income Tax Act 2007. And if the proposition is very simple (for example, the sum of two quantities) using a formula may make it look more complicated than saying the same thing in words.
- (3) Sometimes which is more accessible will depend on the reader: an accountant or an actuary dealing with actual figures may find a formula more useful, while a reader who needs only a description of what is happening may find words more useful. The expected readership may influence which approach is adopted.

## **90 Method statements**

A "method statement" may be the neatest way to set out the various steps in a process. An example is s.91 of the Income Tax Act 2007:

### **"91 How relief works**

This section explains how the deductions are to be made.

The amount of the relievable loss to be deducted at any step is limited in accordance with section 25(4) and (5).

#### *Step 1*

Deduct the relievable loss from the profits of the trade of the final tax year.

#### *Step 2*

Deduct any part of the relievable loss not deducted at Step 1 from the profits of the trade of the previous tax year.

#### *Step 3*

Deduct any part of the reliable loss not deducted at Step 1 or 2 from the profits of the trade of the tax year before the previous one.

#### *Step 4*

Deduct any part of the relievable loss not deducted at Step 1, 2 or 3 from the profits of the trade of the tax year before that one.

#### *Other claims*

If the relievable loss has not been deducted in full at Steps 1 to 4, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief)."

## CHAPTER 6

### OVERVIEW PROVISIONS

#### 91 Introductory

- (1) An “overview” is, typically, a brief summary of the content of an Act, Part, Chapter, group of sections (or articles or regulations) or Schedule. It may also contain signposts to other relevant provisions. Its purpose is to assist the reader in navigating legislative material.
- (2) An overview will generally have no operative effect of its own. It may be contrasted with a purpose clause intended to affect the interpretation of other provision.
- (3) Overviews have been widely used in Tax Law Rewrite legislation. Their use in other legislation becoming a more common.<sup>20</sup>

#### 92 Overviews of whole Acts, Orders or Regulations

- (1) Section 1 of the Corporation Tax Act 2009 is an example of an overview for a whole Act. It may be asked what an overview like this adds to the list of contents. There are perhaps three main arguments in its favour.
  - (a) In a large Act the arrangement by itself can run to many pages (for example, 63 pages in the Corporation Tax Act 2009). This can make it difficult for a reader to get a clear idea of the overall contents of the Act. An overview can offer the reader a snapshot of the Act more briefly (just over a page of text in the Corporation Tax Act 2009).
  - (b) The list of contents can do no more than create a list of the headings to Parts, Chapters, cross-headings and clause titles. An overview can go further, by drawing out the principal themes behind a group of Parts and the relationship between those Parts.<sup>21</sup>
  - (c) An overview can if necessary explain how the new legislation fits into the legislative landscape (for instance, by including signposts to other relevant provision).
- (2) An overview of an entire piece of legislation is most likely to be of use in very large Acts, orders or regulations where the reader is unable to gain an easy grasp of the scope of the legislation from the arrangement or,

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<sup>20</sup> For example, the Banking Act 2009, the Local Government Bye-laws (Wales) Bill currently before the Assembly and the proposed Food Hygiene Rating (Wales) Bill currently out to consultation.

<sup>21</sup> For example, section 1(6) of the Corporation Tax Act 2009 tells readers that Parts 15 to 18 all contain special rules for particular cases, a point that may not be readily apparent from the listing of Parts in the arrangement.

in the case of an Act, the long title. But there is no reason in principle why such sections cannot be used in an Act, Order or set of Regulations of any size if the drafter considers that it would be helpful. But an overview that merely repeats the arrangement, or the explanatory note in the case of a Welsh statutory instrument, in a different format is unlikely to be of any great assistance.

### **93 Overviews of Parts, Chapters and Schedules**

- (1) In Tax Law Rewrite Acts, overviews are also commonly used in relation to Parts and Chapters. A typical overview of a Part that is divided into Chapters contains a brief description of those Chapters. If other provision outside the Part is relevant to the operation of the Part, the overview may also contain a signpost to that other provision in order to alert the reader of its relevance.<sup>22</sup>
- (2) It is for the drafter to determine how useful an overview is likely to be. If the Part or Chapter is short and contains only a few clauses then an overview is unlikely to be of much assistance: the clause headings will suffice. However, an overview may still be of assistance - even for a very short Chapter - if it alerts the reader to the existence of other relevant legislation before the operative provisions of the Chapter.<sup>23</sup>
- (3) To use an overview for one Part does not mean that all other Parts of the Act have to have one.<sup>24</sup> There is no point in having an overview where there is no benefit to the reader.
- (4) An overview may be useful for a long Schedule.<sup>25</sup>

### **94 Sections containing overviews**

- (1) Often an “overview” will have a section to itself<sup>26</sup>. However, sometimes it may be convenient to include interpretative provision, or a provision as to the application of a Part or Chapter, alongside the overview.<sup>27</sup>
- (2) But be careful not to mislead readers. If a combination of operative and inoperative material is desired, “overview” may not be the most helpful section heading (“introduction”, for example, might be better).

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<sup>22</sup> For example, section 35 of the Corporation Tax Act 2010. Subsections (1) and (2) contain descriptions of the Chapters; and subsections (3) and (4) highlight other relevant provision.

<sup>23</sup> For example, section 976 of the Corporation Tax Act 2009.

<sup>24</sup> For example, in the Finance Act 2004, Part 4 has an overview but no other Part does.

<sup>25</sup> See para. 3 of Schedule 19 to the Finance Act 2011, where the Schedule runs to over 50 pages.

<sup>26</sup> For example, section 33 of the Income Tax Act 2007; section 98 of the Corporation Tax Act 2010.

<sup>27</sup> For example, section 615 of the Income Tax Act 2007.

## **95 Operative and inoperative effect**

- (1) The fact that an overview may not be intended by the drafter to have any operative effect does not mean to say that a court would take no account of it in construing the legislation to which the overview relates. So it needs to be drafted with care to ensure that it is an accurate summary of those provisions and could not have an unintended consequence.
- (2) Some overviews go beyond merely outlining the contents of a set of provisions and instead describe or explain how the provisions operate<sup>28</sup>. This kind of descriptive or explanatory material may on occasion be useful. But particular care is required, as it carries a greater risk of unintended consequences than a more standard type of overview containing a mere outline of subject-matter.

## **96 Amending overviews**

- (1) If a provision amends an enactment that is in a Chapter or Part of an Act that includes an overview, then consideration should be given as to whether the overview should be amended to ensure that it continues to be an accurate description of the Chapter or Part.

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<sup>28</sup> For example, section 1(2) to (5) of the Banking Act 2009.

## PART 7

### REPEALS AND AMENDMENTS

#### CHAPTER 1

##### TEXTUAL AMENDMENTS

###### *General issues*

### 97 Differences between English and Welsh

- (1) The amendments required to produce a particular legal effect may be quite different in English and in Welsh.
- (2) For instance, the differences between sentence structure in English and in Welsh (see Part 4, Chapter 2) may mean that an amendment needs to be inserted in a different location in each language. An adjective normally precedes a noun in English but follows a noun in Welsh: “new scheme” but “cynllun newydd”. So if the English text is amended to insert an adjective before a noun, the corresponding amendment to the Welsh text will insert the adjective after the noun.

#### EXAMPLE

*“If the Welsh Ministers publish a [new] scheme, they must lay a copy of that scheme before the Assembly.”*

*“Os yw Gweinidogion Cymru yn cyhoeddi cynllun [newydd], rhaid iddynt osod copi o'r cynllun hwnnw gerbron y Cynulliad.”*

- (3) An amendment to the Welsh text may also give rise to a need for further changes to that text. For example, if a masculine noun is substituted for a feminine noun, any pronouns referring to that noun will also need to be altered (see paragraph 39(3)).
- (4) In producing amendments, the focus should be on whether the same legal effect is achieved in the two languages, rather than on whether the two sets of amendments are the same.

#### *Operative words*

### 98 Insertions and substitutions

- (1) The following forms are widely used, and both are acceptable—
  - imperative form: after x insert y / for x substitute y / ar ôl x mewnosoder y
  - declaratory form: after x there is inserted y / for x there is substituted y / ar ôl x mae y wedi ei mewnosod/fewnosod
- (2) In each case the effect of the amendment is clear.

- (3) Where a single section makes provision for a series of amendments (as opposed to a single amendment) to an Act, or to a section, the first subsection is often in a declaratory form, while the remaining propositions are in the imperative:

*(1) The [Act] is amended as follows...*

*(2) In section 1, after subsection (1) insert....*

*(1) Mae'r [Ddeddf] wedi ei diwygio fel a ganlyn...*

*(2) Yn is-adran 1, ar ôl is-adran (1) mewnosoder...*

- (4) Although the effect is clear, there is something to be said for using the same form in both the opening proposition and the amendments.

## **99 Repeals and revocations**

- (1) The following formulations, or variations of them, are often used to make textual amendments to an Act by the repeal of one or more provisions or words within the Act—

*omit x / x is omitted*

*hepgorer x / mae x wedi ei hepgor*

*x ceases to have effect*

*mae x yn peidio â chael effaith*

*x is repealed*

*mae x wedi ei (d)diddymu*

- (2) Here the imperative form is possible only with “omit” / “hepgor”. And in the case of provisions of secondary legislation the appropriate term is “revoked” / “dirymu” not “repealed” / “diddymu”.
- (3) For repeals of less than a whole Act, all of these are acceptable, regardless of the unit of text being repealed. Clearly only “is repealed” / “wedi ei (d)diddymu” or “ceases to have effect” / “yn peidio â chael effaith” would be used for a whole Act. It might then make for consistency to use “is repealed” / “wedi ei (d)diddymu” or “ceases to have effect” / “yn peidio â chael effaith” (rather than “omit” / “hepgorer”) for smaller units of text.
- (4) To use “is repealed” / “wedi ei (d)diddymu” would also be consistent with “repeal Schedules” / “Atodlenni diddymu” and with the fact that provisions introducing repeal Schedules use the words “are repealed” / “wedi eu (d)diddymu”.
- (5) As between “is repealed” / “wedi ei (d)diddymu” and “ceases to have effect” / “yn peidio â chael effaith”, “is repealed” follows the language of sections 15 to 17 of the Interpretation Act 1978. The advantages of this should probably not be overstated: in *Commissioner of Police of the Metropolis v Simeon* [1982] 2 All ER 813 it was held that the fact that a

repeal was effected by providing that the repealed provisions “shall cease to have effect” was not sufficient to indicate a “contrary intention” within section 16(1) of the Interpretation Act 1978.

- (6) However, it may be helpful to use the word “repeal” / “diddymu” rather than to require the reader to work out that what has been done is in substance a repeal. The “repeal” form is also the shorter of the two.

*Describing where the amendment is to go*

**100 Replacing, or adding to, words in the first place where they occur**

The following (amongst others) are possible—

after “x”, in the first place it occurs, insert “y”

ar ôl “x”, yn y lle cyntaf lle y mae’n digwydd, mewnosoder “y”

after “x”, where first occurring [or appearing], insert “y”,

ar ôl “x”, lle y mae’n digwydd [neu’n ymddangos] gyntaf, mewnosoder “y”

**101 Replacing, or adding to, words in all places where they appear**

- (1) The following (amongst others) are possible—

after “x”, in each place, insert “y”

ar ôl “x”, ym mhob lle, mewnosoder “y”

after “x”, wherever it occurs/appears, insert “y”

ar ôl “x”, lle bynnag y bo’n digwydd/ymddangos, mewnosoder “y”

for “x” (twice) substitute “y”

yn lle “x” (ddwywaith) rhodder “y”.

- (2) In principle, a single amendment could be used to change a term used throughout a piece of legislation. In practice, there are probably relatively few cases where this approach will be appropriate. Obviously, a global amendment should only be used if the drafter is certain that it achieves the right result in each place. And it may be difficult to adopt this approach if the legislation being amended includes legislation in the Welsh language, as the global amendment will need to make provision for a range of consequential changes to mutations, pronouns, and so on.

- (3) It is relatively common practice to put brackets around the words identifying where in the provision the amendment is to be made—  
after “x” (in each place) insert “y”  
ar ôl “x” (ym mhob lle) mewnosoder “y”

after “x” (in the first place it occurs) insert “y”  
ar ôl “x” (yn y lle cyntaf lle y mae'n digwydd) mewnosoder “y”.

- (4) Presumably, the wording in question will only be used where it would not otherwise be clear whether one amendment, or more than one, is intended. So, strictly speaking, brackets ought not to be used (on the basis that brackets are generally reserved for material that is included to assist the reader but does not have substantive legal effect). However, drafters may find that, in some cases, the use of brackets makes the provision easier to read.

## **102 Inserting at the beginning of a provision**

The usual form is to say—

at the beginning insert x/there is inserted x

ar y dechrau mewnosoder x/ mae x wedi ei fewnosod/mewnosod  
rather than to say that x is inserted “before” particular words.

## **103 Inserting text at the end of a provision**

- (1) The usual form is to say—

“at the end”

“ar y diwedd”.

- (2) Sometimes drafters say “add”/ “ychwanegu” instead of “insert” / “mewnosod” for text which is to appear at the end of an existing provision. But it is not wrong to use “insert” / “mewnosod” in this context and it may be simpler to use the same word whether the new text is to appear in the middle or at the end of the existing provision.

## **104 Parts of a subsection**

- (1) In the case of a subsection which includes paragraphs, the words before the paragraphs may be identified as “the opening words” / “y geiriau agoriadol” or “the words before paragraph (a)” / “y geiriau o flaen paragraff(a)”.
- (2) The words after the paragraphs (sometimes referred to by drafters as “full-out” words / “geiriau cloi”) may be identified as “the closing

words” or “the words after paragraph ( )” / “y geiriau ôl paragraff ( )”. Of course, it is not always necessary to specify exactly where in a subsection the words in question appear (for example, if the words appear only once).

## **105 Lists**

Where an amendment is made to insert an entry into a list, such as a list of definitions or statutory bodies, it is sometimes framed as an amendment to insert the text “at the appropriate place” / “yn y lle priodol” (instead of “after” / “ar ôl” something). This is appropriate where, for example, a list runs in alphabetical order.

## **106 Location of a new section**

- (1) It is usual to specify that a new section is to be located “after” / “ar ôl” “another one.
- (2) However, “before” / “o flaen” can be useful where the new section is to be inserted at the beginning of a Part, Chapter or group of sections (where a reference to “after” / “ar ôl” “the preceding section would tend to suggest that the intention was that the new section should appear at the end of the preceding Part etc).

## **107 Unnumbered provisions**

To add a subsection or sub-paragraph to a section or paragraph which is not already subdivided, the recommended form is—

to say first that

In [section] [paragraph] 1 the existing provision becomes [subsection] [sub-paragraph] (1)

Yn [adran] [paragraff] 1 daw'r ddarpariaeth bresennol yn [is-adran] [is-paragraff] 1

then to insert the new material as subsection or sub-paragraph (2).

## **108 How much text to substitute**

- (1) The starting point when drafting a substitution is that the minimum amount of text should be replaced. In most cases, this will make it easier for the reader of the Bill to identify the substantive change that is being made. It also avoids suggesting that changes are being made to text which is not in fact changing.
- (2) However, in some cases it will be helpful to the reader of the Bill, or the reader of the Act being amended, to substitute more text than is strictly necessary. For example—
  - where a number of related changes are being made to a single provision,

- where the end result of a group of amendments would be to alter the whole basis of an existing provision or to leave very little of the previous text,
  - where the passage to be amended has previously been amended non-textually (so that there may be some doubt about which words remain to be textually amended),
  - where it is otherwise helpful to the reader to substitute a few extra words, and
  - if doing so would enable the drafter to repeal an amending provision.
- (3) The risks of substituting more text than is strictly necessary include—
- the risk of missing a cross-reference, non-textual modification or an old saving, and
  - the risk that it will be more difficult for a reader to work out what substantive changes are being made.
- (4) In some cases a parenthetical description may help instead.

## **109 Parenthetical description**

- (1) Generally, see the discussion of parenthetical descriptions in paragraph 84. In this section, only aspects relevant to textual amendments are discussed.
- (2) It has become fairly standard practice to give a brief description of the section or Schedule that is being amended, to give the context of the amendment and perhaps its significance. The parenthetical description will often be the heading of the section or Schedule, but it does not have to be - it may be better, for readers of the Bill, to describe the section in a different way.
- (3) There may be less utility in maintaining this practice in, say, Schedules of consequential amendments, where there is no important substantive effect to be described (and fewer readers to describe it to). For example, if the provision is simply changing the name of a body in all existing legislation, there may be little point in describing every provision where the change is made.

- (4) It is also unlikely to be worthwhile to give the description of a section after which a new section is inserted, unless there is a very close connection between the two.
- (5) To describe the section or Schedule which is being amended may help to explain the significance and context of the amendment, but is unlikely of itself to tell the reader exactly what the amendment does. To tell the whole story the drafter probably needs to describe the particular portion of text which is being amended, whether a subsection or a smaller subdivision. But it will not be practical, or necessary, to do that in every case.
- (6) For an important substantive amendment, it may be worth taking the reader by the hand and explaining the entire context, so that the meaning of the textual amendment is then readily apparent. But it is difficult to sustain this on a consistent basis in legislation of any length. There is certainly no point in giving a description of a subsection unless it actually helps the reader to understand the amendment. And there seems little point in descending to this level of detail in long Schedules of minor or consequential amendments.
- (7) Explanatory notes may help instead.

## **110 Schedules of amendments**

- (1) This relates to the format to be used in Schedules where amendments to an Act are arranged under an italic cross-heading giving the name of the Act.
- (2) The recommended style is—
 

*“Education Act 2005*

1. In the Education Act 2005, after section N...”

*“Deddf Addysg 2005*

1. Yn Neddf Addysg 2005, ar ôl adran N...”
- (3) Note in particular the short title of the Act needs to be given in the text of the amendment as well as in the heading;

## **111 Amendment of section headings etc**

- (1) It is acceptable to amend the heading to a provision.
- (2) In particular, it may be helpful to do so if the provision is falsified by a textual amendment.
- (3) There is no need to amend a heading merely because the existing heading is not quite what you would have chosen for the amended text. Also, the fact that the amended heading has Assembly authority

might lead the courts to attach more weight to it than they would have attached to the original heading.

- (4) There are also examples of cases where a heading needs to be changed without there being a change to the text under the heading. One example is where a parallel set of provisions is added after existing provisions and there need to be headings that distinguish and connect the neighbouring sets of provisions.

## **112 Punctuation**

- (1) Where inserted or substituted words end with a full stop before the closing quotes, there should be no further full stop after the closing quotes.

### *Numbering conventions*

## **113 Re-using numbers**

- (1) When substituting a complete sub-division of text (e.g. a subsection), the numbering of the old provision should generally not be used for the new provision unless (as will frequently be the case) the subject matter of the new provision corresponds to that of the old provision.
- (2) When inserting a complete sub-division of text (e.g. a subsection) in a place where a corresponding sub-division has been repealed, the numbering of the repealed provision should generally not be used for the new provision.
- (3) Occasionally the drafter may decide that there is good reason to depart from the above approaches (e.g. where a repealed provision was repealed many years ago).

## **114 Adding numbered provisions – use of the English or Welsh alphabet**

- (1) The practice for statutory instruments from the establishment of the National Assembly for Wales has been to use the Welsh alphabet for numbering units of text (paragraphs etc) in the Welsh language text and to use the English alphabet for the English text. This means that the equivalent unit of text from each language version is often different, so section 1(1)(d) in the English text would be section 1(1)(ch) in the Welsh text.
- (2) This is fine where the user of the text is referring only to one language text, but there is potential for confusion or difficulty in contexts where both the English and Welsh language texts are being referred to, for example in a bilingual debate on the floor of the Assembly about the provisions where simultaneous translation is necessary, or indeed bilingual proceedings in a court or tribunal. It was decided in the third Assembly that Assembly Measures would use the English alphabet in the

Welsh text for numbering purposes and the same practice is applied to Assembly Bills. This was done in order to remove a potential barrier to the use of Welsh in contexts like the floor of the Assembly or a court or tribunal where legislation in both English and Welsh is available <sup>29</sup>.

- (3) The practice from 1 April 2012 is that the numbering conventions of Assembly Bills should also be applied to Welsh statutory instruments. So the following recommendations on adding numbered provisions apply to the Welsh text as well as the English text.

### **115 Adding provisions at the beginning of a series**

The following applies when inserting a provision at the beginning of an existing series of provisions (e.g. a subsection at the beginning of a section or a Schedule before the first Schedule).

- New sections inserted before the first section of an Act are preceded by a letter, starting with "A".

- The same approach is taken in relation to all other divisions of text (other than lettered paragraphs).

Thus the Insolvency Act 2000 inserted a Schedule A1 before Schedule 1 to the Insolvency Act 1986, and the Enterprise Act 2002 inserted a new Schedule B1 after Schedule A1.

- A provision inserted before "A1" (or "ai") is "ZA1" or ("zai").
- In the case of lettered paragraphs, new paragraphs inserted before paragraph (a) are (za), (zb) etc.
- And paragraphs inserted before (za) are (zza), (zzb) etc.

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<sup>29</sup> The same solution has been adopted where the same issue has arisen in other bi-lingual jurisdictions, such as Hong Kong.

## **116 Adding provisions at the end of a series**

Where adding a provision at the end of an existing series of provisions of the same kind (e.g. a subsection at the end of a section or a Schedule at the end of the Schedules), the numbering should continue in sequence.

## **117 Inserting whole provisions between existing provisions**

The following applies when inserting whole provisions between existing provisions.

- New provisions inserted between 1 and 2 are 1A, 1B, 1C etc.
- New provisions inserted between 1A and 1B are 1AA, 1AB, 1AC etc.
- New provisions inserted between 1 and 1A are 1ZA, 1ZB, 1ZC etc. (and not 1AA etc.)
- New provisions inserted between 1A and 1AA are 1AZA, 1AZB, 1AZC etc.

Do not generate a lower level identifier unless you have to.

- A new provision between 1AA and 1B is 1AB not 1AAA.
- But a new provision between 1AA and 1AB is 1AAA.

The above recommendations apply equally to sub-paragraphs with roman numerals and lettered paragraphs.

- New sub-paragraphs between sub-paragraphs (i) and (ii) are (ia), (ib), (ic) etc.
- New paragraphs between paragraphs (a) and (b) are (aa), (ab), (ac) etc.
- New paragraphs between paragraphs (a) and (aa) are (aza), (azb), (azc) etc.

## **118 Insertions resulting in a series of more than 26 new sections, articles or regulations**

This relates to the rare occasions when the insertion of new sections, articles or regulations into a piece of legislation would result in a series of more than 26 new units.

- After Z use Z1, Z2, Z3 etc.

So in the Capital Allowances Act 2001 section 360Z is followed by sections 360Z1 to 360Z4.

## **119 Insertions resulting in series of more than 26 lettered paragraphs**

This relates to the rare occasions when the insertion of new paragraphs into a section would result in a series of more than 26 lettered paragraphs.

- After paragraph (z) insert paragraphs (z1), (z2), (z3) etc.

## CHAPTER 2

### NON-TEXTUAL MODIFICATIONS

#### 120 Non-textual modifications and textual amendments

- (1) This chapter is about how to distinguish a non-textual modification from a textual amendment.
- (2) By “non-textual modification” is meant a modification of an enactment that is not intended to result in a change to the text of the modified enactment when the enactment is next printed (in contrast to a textual amendment, which is).
- (3) There have been occasions where it has not been clear to departments, or to those who produce and edit statutory text, whether something is a textual amendment or a non-textual modification. Sometimes non-textual modifications have even been printed as textual amendments.
- (4) It is therefore important to be make it clear what is intended.

#### 121 Need to avoid formulations used in textual amendments

- (1) Sometimes non-textual modifications are drafted in essentially the same form as a textual amendment, the only difference being in the opening wording—

*EXAMPLE (to avoid)*

*(1) Section 3 applies to fine defaulters as to offenders but with the following modifications—*

- (a) in subsection (1) for “offence” substitute “default”; and*
- (b) in subsection (2) for “6 months” substitute “3 months”.*

*(1) Mae adran 3 yn gymwys i ddrwgdalwyr dirwyon fel y mae'n gymwys i droseddwyr ond gyda'r amrywiadau a ganlyn-*

- (a) yn is-adran (1) yn lle “tramgwydd” rhodder “drwg daliad”; a*
- (b) yn is-adran (2) yn lle “6 mis” rhodder “3 mis”.*

- (2) This might readily be mistaken for a textual amendment. The opening words give a clue that something other than a textual amendment is intended, but the rest is exactly the same as a textual amendment. It would be particularly easy to lose sight of the opening words if the list of substitutions and other changes were very long.
- (3) It would be clearer, in the first place, if the subjunctive mood were used to indicate that there is no intention actually to substitute the text—

*EXAMPLE*

*(1) Section 3 applies to fine defaulters as to offenders but as if—*

*(a) in subsection (1) for “offence” there were substituted “default”, and*

*(b) in subsection (2) for “6 months” there were substituted “3 months”.*

*(1) Mae adran 3 yn gymwys i ddrwgddalwyr dirwyon fel y mae'n gymwys i dramgwyddwyr ond fel petai-*

*(a) “drwgddaliad” yn cael ei roi yn lle “tramgwydd” yn is-adran (1), a*

*(b) “ 3 mis” yn cael eu rhoi yn lle “6 mis” yn is-adran (2).*

- (4) Better yet, though, would be to avoid the reference to substitution altogether—

*EXAMPLE*

*(1) Section 3 applies to fine defaulters as to offenders but as if—*

*(a) in subsection (1) the reference to an offence were to a default; and*

*(b) in subsection (2) the reference to 6 months were to 3 months.*

*(1) Mae adran 3 yn gymwys i ddrwgddalwyr fel y mae'n gymwys i dramgwyddwyr ond fel petai-*

*(a) y cyfeiraid yn is-adran (1) at dramgwydd yn gyfeiriad at ddrwgddaliad; a*

*(b) y cyfeiriad yn is-adran (2) at 6 mis yn gyfeiriad at 3 mis.*

## **122 “Modification”**

Incidentally, the use of the word “modification” (“amrywio”) does not of itself exclude the possibility that what is intended is a textual amendment. The word is sometimes used (rightly) to describe a textual amendment — see for example section 517(6) of the Education Act 1996 and section 26(2) of the Criminal Justice and Court Services Act 2000.

## CHAPTER 3

### AMENDMENT OF UNCOMMENCED PROVISIONS ETC

#### 123 Amendment of a provision not in force

- (1) A piece of legislation should not ignore relevant enacted material merely because that material is not yet in force. It is prudent to keep uncommenced legislation in a state where it could be brought into force. So if the policy behind a piece of legislation require changes to a provision, or would require changes to it were it in force, the provision should normally be amended accordingly.
- (2) There are sometimes questions about whether an amendment is to be commenced by the commencement powers in an amending Act or those in the amended Act.
- (3) The starting point is that commencement of a provision of an Act depends upon the provision for commencement made in that Act. This includes a provision that amends an uncommenced provision in an earlier Act. Conversely, an Act's commencement provisions apply to the provisions of the Act and are not intended, at the time of enactment, to apply to all text that happens to be added by amendment by later Acts.
- (4) In some cases the drafter can and should rely simply on the commencement provision in the amending Act. For example, if the policy is that the uncommenced provision in an earlier Act should come into force and operate for a while without the amendment made by the amending Act, the later commencement of the amendment can only depend on the provision in the amending Act.
- (5) Or again, an amendment may consist of the insertion of free-standing provision that is capable of having effect without reference to neighbouring uncommenced provisions of the Act. Such added provision could be brought fully into force by or under the amending Act, without any reliance on the amended Act's commencement provisions.
- (6) There may be cases where a drafter would want the text added by a Bill to be subject to the commencement provisions of the Act being amended. The drafter might, for example, want the Act's power to make transitional provision in connection with commencement to apply to provision as amended by the Bill. That is perhaps particularly likely where the amendment has no meaning on its own.
- (7) In some cases it may be obvious that the amendment made by the Bill itself impliedly modifies the Act's commencement provisions so that

they apply to the amended text as they would have applied to the unamended text. This approach seems most reasonable where the text added by the amendment cannot operate independently of the provision amended.

- (8) But if in any given case it is not obvious that this is the intention of the amending Act, then specific provision will be needed to apply the commencement provisions of the amended Act.

## **124 Amendment of a provision subject to an uncommenced repeal**

- (1) Similarly, a Bill should not ignore relevant enacted material merely because it is subject to an uncommenced repeal. So a provision in an Act subject to an uncommenced repeal should be amended by a Bill if the policy of the Bill demands the change while the provision remains unrepealed.
- (2) If a provision in an Act is subject to an amendment that operates by way of substitution - that is, a repeal plus the insertion of new text - the policy of the Bill may make it necessary to amend the provision in its original and in its substituted form. In such a case, a Bill should make it clear which version of the Act's provision is being amended.
- (3) In the case of an amendment of provision subject to an uncommenced repeal, there may be a question about whether the repeal, when commenced, would apply to the provision as afterwards amended. An analysis similar to that applying to amendments of uncommenced provisions applies here: the repeal, when enacted, could only have been addressed to provisions that then existed. It could similarly be argued that a Bill's amendment of a provision impliedly modifies the uncommenced repeal of that provision, so that the repeal applies to the provision as modified.
- (4) One possible solution is for the Bill to make transitory provision that has effect only until the repeal is commenced.
- (5) The prudent course for a drafter operating on provision subject to an uncommenced repeal is to check the provisions that relate to the repeal and its commencement in the Act containing the uncommenced repeal.
- (6) If provision is spent, it can be ignored rather than amended - and this would be true even if the provision is subject to an uncommenced repeal. But be sure that the provision is spent - the fact that the repeal has not been commenced might suggest a decision to keep the provision in force.

## PART 8

### OPERATIVE PROVISIONS

#### CHAPTER 1

##### PERIODS OF TIME

### 125 Introductory

- (1) This Part considers some aspects of expressing periods of time. It assumes that in deciding how to describe a particular period the drafter's objectives are:
  - (a) to ensure that it is certain when the period begins and ends;
  - (b) to ensure that the reader has the greatest chance possible of telling from the words used when the period begins and ends, rather than having to refer to case law;
  - (c) to express the period as simply as possible.

### 126 Start of period: fractions of days

- (1) An Act often needs to describe a period by reference to some event. An example is a period of 14 days during which an appeal may be made, where the "event" is the decision to which the appeal would relate.
- (2) In this example, it might be supposed that the appeal period should run from the decision. But this would cause problems, because the decision will have been made part-way through a day, and if the appeal period is to be expressed in whole days (or weeks, months or years) it has to begin at the beginning of a day. The question is, which day? Instructions are not always clear on this point.
- (3) It may well be wrong in policy terms for the period to start running from the beginning of the day after the day of the decision, because that would disallow an appeal made on the day of the decision.
- (4) If the period starts with the beginning of the day of the decision, it will technically include the part of that day that precedes the decision (during which an appeal will of course be impossible). This may not in practice cause any problems. But if the appeal period is short (for example, 7 days), it may be worth considering whether as a matter of policy the number of days should be increased by one, to take account of the fact that the period starts to run on the day of the decision and not the next day.
- (5) Appeal periods are of course not the only periods that give rise to this kind of question.

- (6) It may not always produce the right result to begin a period at the beginning of the day on which a particular event occurs: each case needs to be considered on its own merits. And it will be obvious when some periods should start (for example, a year beginning with 1 April), so fractions of a day are not always an issue.

## **127 “Beginning with”, “from”, “after” “gan ddechrau ar”, “oddi ar”, “ar ôl”**

- (1) A clear way of expressing a period of, for example, 14 days so that it starts at the beginning of a particular day is to describe the period as “14 days beginning with” / “ 14 o ddiwrnodau gan ddechrau ar” the day in question.
- (2) Alternative methods are to refer to a period of 14 days “from” / “oddi ar” or “after” / “ar ôl” a particular event.
- (3) The proper construction of “14 days from [the event]” / “14 o ddiwrnodau oddi ar [y digwyddiad]” will depend on the context. As a general rule, this wording will be taken to exclude the day on which the event takes place. This is something of which the user of the Act may very well be unaware.
- (4) “14 days after [the event]” / “ 14 o ddiwrnodau ar ôl [y digwyddiad]” will also generally be taken to exclude the day of the event (*Dodds v Walker* [1981] 2 All ER 609) but this will also depend on the context.
- (5) It is suggested that “14 days beginning with” / “14 o ddiwrnodau gan ddechrau ar” the day of an event (or any other day or date) is often the least ambiguous short way of ensuring that the period starts to run from the beginning of that day. The formula “X months beginning with the day on which” / “ X mis gan ddechrau ar y diwrnod pan” an Act is passed has long been the preferred way of framing a period of months for which commencement is postponed.
- (6) References to a period “ending with” / “sy'n gorffen ar” a particular day or date are equally unambiguous.
- (7) A reference to a period “beginning on” / “ gan ddechrau ar” or “ending on” / “gan orffen ar” a particular date or day would not give the same certainty, because it would leave open the question of the time at which (on the day in question) the period begins or ends.
- (8) A reference to “14 days from” / “ 14 o ddiwrnodau oddi ar” a point that is bound to occur at midnight (for instance, the end of a year) makes clear exactly when the 14 days are to begin and end: in such a case “from” / “oddi ar” is as unambiguous as “beginning with” / “gan ddechrau ar”.

## **128 “The period of”**

Acts have often referred to (for example) a 14 day period as “the period of 14 days” / “cyfnod o 14 o ddiwrnodau”. In many cases the

words “the period of” / “cyfnod o” do not add anything and could be omitted – the reference could simply be to “14 days” / “14 o ddiwrnodau”. If a reference back is needed, it may be possible to refer to “those 14 days” / “ y 14 o ddiwrnodau hynny” instead of to “that period” “y cyfnod hwnnw”.

### **129 “Within” “o fewn”, “before the end of” “cyn pen”**

- (1) Statute often requires something to be done “within” / “o fewn” a particular period or “before the end of” / “cyn pen” a particular period.
- (2) A requirement to take an action “before the end of 3 weeks beginning with [a particular date]” / “cyn pen 3 wythnos gan ddechrau ar [ddyddiad penodol]” would apparently allow the action to be taken at any time up to the end of those 3 weeks, including at any time before the 3 weeks began. A requirement to take the action “within” / “o fewn” those 3 weeks would limit the time in which the action may be taken to those 3 weeks.
- (3) In some cases, the effect of either wording will in practice be the same. An example would be where a copy of a document is required to be given within/before the end of 3 weeks beginning with the date when the document comes into existence. But in other cases, the different wordings may produce materially different results.
- (4) A requirement to do something “by the end of” / “erbyn diwedd” a period would seem to amount to the same thing as a requirement to do it “before the end of” / “cyn pen” the period.

### **130 Units of time**

- (1) Periods of time are commonly expressed in days, weeks, months or years. Which unit of time to use will depend sometimes on the policy and sometimes on the drafter’s decision.
- (2) Obviously, the longer the period, the less helpful it will be to use short units of time. For example, it is suggested that all readers will know that 30 days is about a month, but that a period expressed as (for example) 150 days would be much less readily understandable.
- (3) Months are a particular problem because of their varying length. (Schedule 1 to the Interpretation Act 1978 defines a “month” as a calendar month, but this appears to do no more than prevent it from being interpreted as a lunar month.) When a period of “one month” begins other than at the beginning of a month, when does it end?
- (4) According to the rule in *Dodds v Walker* ([1981] 2 All ER 609), where an application had to be made “not more than 4 months after” the giving of a notice on 30 September 1978, the last date for making the application was 30 January 1979. The date of 30 January 1979 is arrived at by treating the 4-month period as:

- beginning at midnight between 30 September and 1 October 1978 (that is, excluding the rest of the day on which the notice was given), and
  - expiring at the end of the day in January 1979 corresponding to the day in September 1978 at whose end the period began - that is, day 30. (If the period had been expressed to be "4 months beginning with" "4 mis gan ddechrau ar " the date when the notice was given, the last date for making the application would have been 29 January.)
- (5) The rule in *Dodds v Walker* is known as "the corresponding date rule". Under it, the length of a period of "1 month" varies according to when the period begins. For example, a period of "1 month" beginning at midnight on 4/5 April, which will end at midnight on 4/5 May, will be shorter than a period of "1 month" beginning at midnight on 4/5 May (because April is shorter than May).
- (6) The corresponding date rule obviously cannot apply unmodified in all cases, because the months of the year do not all have the same number of days. *Dodds v Walker* confirmed that where (for example) a period of 1 month starts at the end of 30 January, it ends at the end of 28 February, or in a leap year 29 February.
- (7) Because the corresponding date rule can be a trap for the user, in some cases it may be worth considering whether a period of (for example) 3 months would be better expressed as 12 weeks or 90 days. The periods expressed in these ways will not be identical, but whether this matters will depend on the context.

### **131 Non-working days**

- (1) Some Acts exclude certain days (for example, Saturdays, Sundays and bank holidays) from specified periods. Others make no distinction between holidays and working days. If a specified period is very short, it may be worth remembering that weekends and bank holidays will not be treated differently from other days unless express provision to this effect is included.
- (2) If any non-working days are to be excluded from a period, consideration needs to be given to exactly which days these should be.
- (3) Schedule 1 to the Banking and Financial Dealings Act 1971 lists some bank holidays, but not all. Bank holidays may be created by royal proclamation - the early May bank holiday is an example.

## CHAPTER 2

### POWERS TO MAKE SUBORDINATE LEGISLATION

#### 132 Attracting section 1 of the Statutory Instruments Act 1946

(1) Section 1(1A) of the Statutory Instruments Act 1946 states—

“Where by any Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on the Welsh Ministers and the power is expressed to be exercisable by statutory instrument, any document by which that power is exercised shall be known as a “statutory instrument” and the provisions of this Act shall apply to it accordingly.”

(2) The reference in section 1(1A) to “the Welsh Ministers” includes the First Minister and the Counsel General by virtue of section 11A (8) of the 1946 Act.

(3) To attract section 1 of the 1946 Act it is sufficient to say –

*Orders/regulations [made by the Welsh Ministers] under this section are to be made by statutory instrument.*

*Mae gorchmynion/rheoliadau [a wneir gan Weinidogion Cymru] o dan yr adran hon i'w gwneud drwy offeryn statudol.*

(4) It may sometimes be neater to roll up the attraction of section 1 with the power itself.

#### EXAMPLE

*The Welsh Ministers may by order made by statutory instrument provide...*

*Caiff Gweinidogion Cymru drwy orchymyn a wneir drwy offeryn statudol ddarparu...*

(5) This may be neater where there is a simple power and everything can be dealt with in a single subsection. This technique is often used, for example, for commencement powers (“on such day as the Welsh Ministers may by order made by statutory instrument appoint”).

(6) If there are a number of powers to be exercised by statutory instrument, it may be best to have a single provision at the end, rather than saying the same thing several times over in different places. This is technical provision which is unlikely to be of interest to most readers.

### 133 Negative resolution procedure

- (1) To be consistent with section 5 of the 1946 Act, the statutory instrument containing the order/regulations - rather than the order/regulations themselves - should be expressed to be subject to annulment.

#### EXAMPLE

*A statutory instrument containing an order or regulations under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.*

*Mae offeryn statudol sy'n cynnwys gorchymyn neu reoliadau o dan y Ddeddf hon yn agored i gael ei ddirymu yn unol â phenderfyniad gan Gynulliad Cenedlaethol Cymru.*

### 134 Affirmative resolution procedure

- (1) To be consistent with the recommended approach for negative instruments (above) - and with the wording of section 6 of the 1946 Act - the required approval should relate to a draft of the statutory instrument containing the order/regulations, rather than a draft of the order/regulations themselves.

#### EXAMPLE

*A statutory instrument containing an order or regulations under this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.*

*Ni chaniateir i offeryn statudol sy'n cynnwys gorchymyn neu reoliadau o dan y Ddeddf hon gael ei wneud oni bai bod drafft o'r offeryn wedi ei gyflwyno gerbron Cynulliad Cenedlaethol Cymru ac wedi ei gymeradwyo ganddo drwy benderfyniad.*

### 135 Combined instruments

- (1) If the intention is expressly to authorise the making of instruments containing provisions subject to negative and affirmative procedure, it may be helpful to use the formulation suggested above for affirmative procedure with the addition of "(whether alone or with other provision)".

## EXAMPLE

*A statutory instrument containing provision under section X (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.*

*Ni chaniateir i offeryn statudol yn cynnwys darpariaeth o dan adran X (p'un ai ar ei phen ei hun ynteu ynghyd â darpariaeth arall) gael ei wneud oni bai bod drafft o'r offeryn wedi ei gyflwyno gerbron Cynulliad Cenedlaethol Cymru ac wedi ei gymeradwyo ganddo drwy benderfyniad.*

### **136 Location of procedural provision**

- (1) In some Acts, each provision which confers a power to make subordinate legislation applies any necessary Parliamentary or Assembly procedure.
- (2) But, where an Act confers a number of powers to make subordinate legislation, these matters are more often dealt with in general provisions situated at the back of the Act.
- (3) A "hybrid" approach is adopted in some UK Acts. The provision conferring the power says that it is subject to the "negative resolution procedure" or the "affirmative resolution procedure". Then, at the end of the Act, there is a definition of "negative resolution procedure" or "affirmative resolution procedure" (or both).

EXAMPLE (from the Companies Act 2006)

*Regulations under this section are subject to affirmative resolution procedure. (Section 54(3))*

*Regulations under this section are subject to negative resolution procedure. (Section 66(5))*

*Where regulations or orders under this Act are subject to "negative resolution procedure" the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. (Section 1289)*

*Where regulations or orders under this Act are subject to "affirmative resolution procedure" the regulations or order must*

*not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament. (Section 1290)*

- (4) During the Assembly scrutiny stages of a Bill, the appropriate procedure could be debated together with the contents of a power and it may, therefore, be convenient if the two are located together. But readers of the final Act may find multiple references to the Assembly procedure intrusive. Matters of procedure are technical matters, and once the Bill is enacted are only likely to be of interest to those making the subordinate legislation and those in the Assembly administering the procedures.
- (5) On that basis, it may be best on the whole to deal with Assembly procedure at the back of the Bill. There may of course cases where it is appropriate to depart from this recommendation (for example, if the Bill contains only a small number of powers to make subordinate legislation).

## PART 9

### FINAL PROVISIONS IN A BILL

#### 137 Running order

- (1) The following running order should be used as a starting point when it comes to deciding the running order for the final provisions of a Bill—

General provisions about offences (bodies corporate, unincorporated associations)

Orders and regulations (including Assembly procedure)

Directions

Notices/service of documents

Interpretation

Index

Amendments, transitional provisions and savings, repeals

Crown application

Commencement

Short title

- (2) Of course it may be necessary to depart from this in some circumstances.
- (3) The assumptions that underlie the recommended running order are—
- (a) matters of substance, such as offences by bodies corporate, should come before procedural matters;
  - (b) there is an affinity between provisions relating to subordinate legislation and those relating to other documents;
  - (c) similarly there is an affinity between provisions relating to the application of provisions of the Bill and those relating to extent;
  - (d) the essentially procedural nature of provisions dealing with financial matters means that they can appear relatively low in the running order;
  - (e) commencement should be dealt with as late as possible in the Bill and so should normally be dealt with immediately before the short title section;
  - (f) there is an expectation that the short title will appear in the last section.

- (4) Where there is to be a single section introducing Schedules containing minor and consequential amendments, transitional provisions and savings, and repeals, the section should deal with those topics in that order.
- (5) Although the running order above deals with extent, commencement and short title separately, a Bill may be so short that it would be better to deal with all three topics in a single section.

### **138 Cross-heading**

If a single cross-heading is used to cover all the final provisions of a general nature, it should be “General” (rather than, for example, “Supplementary”).

### **139 Extent and application**

- (1) Extent provisions in Acts of Parliament tell the reader to which jurisdiction of the UK a particular provision applies.
- (2) Wales forms part of the unified jurisdiction of England and Wales. The provisions of an Assembly Act may only extend to the jurisdiction of England and Wales (although provisions will usually apply only in relation to Wales). As a result there is no need to include an extent provision in an Assembly Act telling the reader that it forms part of the law applicable to the England and Wales court system.
- (3) However, the territorial application of provisions should be made clear in the Act.

### *Commencement*

### **140 Commencement on Royal Assent**

- (1) The provisions that are to come into force on Royal Assent should be identified expressly.
- (2) The form of words used to bring such provisions into force should normally be designed to attract section 4(a) of the Interpretation Act 1978.

#### *EXAMPLE*

*Sections X and Y come into force on the day on which this Act receives Royal Assent.*

*Daw adrannau X ac Y i rym ar y diwrnod y caiff y Ddeddf hon ei Chydsyniad Brenhinol.*

- (3) Very exceptionally the desired policy may involve specifying a particular time of day at which immediate commencement is to occur.

#### **141 Commencement at end of fixed period**

The recommended standard form of words is—

*[This Act] comes into force at the end of the period of [2 months] beginning with the day on which it receives Royal Assent.*

*Daw[‘r Ddeddf hon] i rym ar ddiwedd y cyfnod o [2 fis] sy’n dechrau ar y diwrnod y caiff ei Chydsyniad Brenhinol*

#### **142 Commencement by order**

- (1) In general it is clearer to say that provision is to come into force on a day appointed by order by a particular person, than to say that it comes into force “in accordance with” (“yn unol â”) provision made by order. In the latter case it may not be clear whether any further power — for example, a power to make transitional provision — is also being conferred. (If further power is wanted, it should be conferred expressly — see below).
- (2) An “appointed day” (“diwrnod penodedig”) provision should take the form of a positive statement along the lines that provisions “are to come into force on a day appointed by X in an order” / “ i ddod i rym ar ddiwrnod y caiff X ei benodi drwy orchymyn” (rather than that they do not come into force until such day as X may by order appoint).

#### **143 Commencement by order: supplementary provisions**

- (1) Where there is a power to commence, consideration should be given to dealing with everything relating to commencement in a separate set of provisions, rather than in a general section relating to other order-making powers under the Bill. It may not be clear how powers conferred generally in relation to orders under the Bill will work in relation to the specific case of commencement.
- (2) So, for example, the separate provision would expressly provide as necessary for—
  - (a) different days to be appointed for different purposes;
  - (b) the making of transitional, transitory or saving provision in relation to
  - (c) commencement;
  - (d) the making of supplemental, incidental or consequential provision in relation to commencement.
- (3) The power to commence would then need to be excluded from any general supplementary provision along these lines attaching to order-making powers under the Bill.

(4) Note that the last two bullets of paragraph (2) refer to “commencement” (“cychwyn”). It may be necessary to make transitional provision in connection with the commencement of provisions on a date fixed by the Bill (e.g. 2 months after Royal Assent) as well as in connection with the commencement of provision by order. In such a case there would seem to be a strong argument for having a single express power to make transitional provision in connection with commencement, whether by order or on a fixed date.

(5) Note also—

(a) a “transitional” provision (“darpariaeth drosiannol”) is a provision that manages the transition from one regime to another.

*EXAMPLE*

*A provision that spells out how the Bill works in relation to events or matters that*

*span the end of the old regime and the start of the new regime.*

(b) a “transitory” provision (“darpariaeth ddarfodol”) is a provision that has a limited shelf-life such as a provision that will expire on a particular day.

*EXAMPLE*

*A provision that references in the Dogs Act 1990 to dogs include cats until the*

*coming into force of the Cats Act 2010.*

Depending upon the circumstances, a transitory provision may also be a

transitional provision but need not be so.

(c) a “saving” provision (“darpariaeth arbed”) is a provision that saves the operation of an existing piece of legislation or rule of law. It can do this for a temporary period or for ever, and for transitional purposes or for other purposes. It might therefore be a transitional or transitory provision but need not be so.

(d) there is no obvious difference in meaning between “supplementary” (“atodol”) and “supplemental” (“atodol”). The recommendation is that “supplementary” be preferred (as perhaps the more usual formulation).

## **144 Short title**

For consistency, the following formulation is to be used—

“The short title of this Act is...”

“Enw byr y Ddeddf hon yw...”

## ANNEX

### FURTHER READING

Listed here are the works referred to in this Guidance together with a small selection of other useful material.

#### **Published material**

Asprey M., Plain Language for Lawyers (Federation Press, Sydney, 4th ed., 2010)

Butt P. & Castle R., Modern Legal Drafting - A Guide to Using Clearer Language (Cambridge

University Press, 2nd ed., 2006)

Dickerson F. Reed, Fundamentals of Legal Drafting (Aspen Publishers, 1965)

Equal Opportunities Commission, Advertising Jobs in Welsh (Equal Opportunities Commission, 2001)

Greenberg D., Craies on Legislation (Sweet and Maxwell, London, 9th ed., 2008)

McLeod I., Principles of Legislative and Regulatory Drafting (Hart, Oxford and

Portland Oregon, 2009)

Prys D., "Gender and Sex in Welsh Nouns", *Planet* 121.

Thornton G.C., Legislative Drafting (Butterworths, London, 4th revised ed 2006)

Salembier P., Legal and Legislative Drafting (Lexis Nexis Canada 2009)

#### **Material from other drafting offices etc**

Australia

Office of Parliamentary Counsel, Australian Government, Plain English Manual,

available at [www.opc.gov.au/plain/docs.htm](http://www.opc.gov.au/plain/docs.htm)

Law Reform Commission of Victoria, Plain English and the Law, 1987, Appendix 1 —

"Guidelines for Drafting in Plain English: A Manual for Legislative Drafters"

Canada

Department of Justice, Legistics, available at

[www.justice.gc.ca/eng/dept-min/pub/legis/index.html](http://www.justice.gc.ca/eng/dept-min/pub/legis/index.html)

European Union

See the guidance prepared by the Legal Revisers of the Commission Legal Service:

[http://ec.europa.eu/dgs/legal\\_service/legal\\_reviser\\_en.htm](http://ec.europa.eu/dgs/legal_service/legal_reviser_en.htm)

New Zealand

Parliamentary Counsel Office, NZ

<http://www.pco.parliament.govt.nz/clear-drafting>

United Kingdom

Tax Law Rewrite: The Way Forward: Annex 1 - Guidelines for the Rewrite

[www.hmrc.gov.uk/rewrite/wayforward/menu.htm](http://www.hmrc.gov.uk/rewrite/wayforward/menu.htm)

Plain Language and Legislation (Office of the Scottish Parliamentary Counsel)

[www.scotland.gov.uk/Publications/2006/02/17093804/0](http://www.scotland.gov.uk/Publications/2006/02/17093804/0)

Drafting Guidance of the Office of the Parliamentary Counsel (UK Government)

<http://www.cabinetoffice.gov.uk/resource-library/drafting-guidance-office-parliamentary-counsel>

### **Commonwealth Association of Legislative Counsel**

See the Association Journal, *the Loophole*, and separate discussion papers on the Association's website:

<http://www.opc.gov.au/calc/index.htm>