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

LEGISLATION (WALES) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Legislation (Wales) Act 2019 which was passed by the National Assembly for Wales on 16 July 2019 and received Royal Assent on 10 September 2019. They have been prepared by the Office of the Legislative Counsel of the Welsh Government to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

2. The Explanatory Notes are not meant to be a comprehensive description of the contents of the Act. Where an individual provision of the Act does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Act makes provision about the interpretation and operation of Welsh legislation, and requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law:

    a. Part 1 imposes duties on the Counsel General to the Welsh Government and the Welsh Ministers relating to the accessibility of Welsh law.

    b. Part 2 makes general provision about the interpretation and operation of the Act itself and of Welsh legislation enacted after Part 2 comes into force.

    c. Part 3 gives the Welsh Ministers powers to replace descriptions of dates in Welsh legislation and to make subordinate legislation in different forms, and provides for the combination of subordinate legislation that is subject to different procedures in the National Assembly for Wales.

    d. Part 4 contains general provisions, including consequential amendments to other legislation and provision about when and how the Act comes into force.

4. The Act forms part of the Welsh Government's wider programme of improving the accessibility of Welsh law and clarifying and simplifying the operation of Welsh legislation.

5. The background to the Act has involved a number of inquiries and consultations.

6. In its report *Making Laws in Wales* (October 2015), the Constitutional and Legislative Affairs Committee of the National Assembly for Wales made a number of recommendations relating to the quality, preparation and scrutiny of legislation. In particular, it recommended that the Welsh Government develop a long-term plan for consolidating the law in Wales, and that the Counsel General work towards producing a separate Welsh interpretation Act.

7. In its report *Form and Accessibility of the Law Applicable in Wales* (Law Com No 336, June 2016), the Law Commission recommended that the Welsh Government should pursue a policy of consolidating and codifying the law in Wales. It made a number of recommendations relating to the process of consolidation and codification, including that the Counsel General should be required to present a codification programme and report on progress to the National Assembly for Wales.

8. The Law Commission also recommended that the Welsh Government and the National Assembly consider, and keep under review, the practical benefits of introducing an Interpretation Act for Wales, and made further recommendations relating to the quality, publication and availability of legislation.

9. The Welsh Government subsequently published a consultation document *Interpreting Welsh Legislation: Considering an interpretation Act for Wales* (WG 32209, June 2017), seeking views on the benefits of having a separate Welsh Interpretation Act and on the approach that such an Act should take. This was followed by a second consultation, *Draft Legislation (Wales) Bill* (WG 34368, March 2018) which included a draft Bill and sought views on the approach taken in the draft. The responses to both consultations were taken into account in developing the Legislation (Wales) Bill for introduction into the National Assembly.

COMMENTARY ON SECTIONS
PART 1: ACCESSIBILITY OF WELSH LAW
Section 1 – Duty to keep accessibility of Welsh law under review

10. In order to inform the process of making Welsh law more accessible section 1(1) requires the Law Officer for Wales, the Counsel General, to keep the accessibility of Welsh law under review. The Counsel General is a member of the Welsh Government, appointed by Her Majesty upon the recommendation of the First Minister under section 49 of the Government of Wales Act 2006.

11. The duty in section 1(1) is similar to, and intended to supplement (not replace), the obligation on the Law Commission to keep the law under review under section 3(1) of the Law Commissions Act 1965. It requires a focus on the law as a collective, be that the law on a particular subject or the statute book as a whole. It also means that the Counsel General's obligation to keep the accessibility of Welsh law under review will be relevant when the Welsh Ministers are considering whether to propose new legislation. In such situations regard should be had to how the approach taken to legislating could impact upon the accessibility of the law. This does not, however, mean that the Welsh Ministers would have to legislate in a particular way in any individual case.

12. The "accessibility" of Welsh law is defined in section 1(2) as having four elements.

13. The first is the extent to which Welsh law is readily available to members of the public in Welsh and English. The law is not accessible unless those who may be affected by it can obtain it and view it. The main way of achieving this is to publish legislation online in both languages, so that it can be read free of charge.

14. The second element is the extent to which the law is published in an up-to-date form in both languages. In practice accessibility requires more than making each piece of legislation available, and requires it to be available in a form that enables people to see its current effect. This involves identifying whether provisions are in force and showing any amendments made to legislation by other legislation which is made or is brought into force subsequently.

15. The third element is the extent to which Welsh law is clearly and logically organised. To be truly accessible legislation should organised in such a way as to make it as easy as practicable for people to find the law relevant to them and to see and understand see the relationships between enactments. So the structure of legislation should be clear, consistent and coherent; both within individual enactments and across enactments on particular subjects and the statute book as a whole.

16. The final element is the extent to which the law is easy to understand and certain in its effect. This includes the extent to which the law is formulated clearly and precisely, as it will not be accessible if its language is unnecessarily complicated or obscure. This also includes the availability of other explanatory material or commentary that can help people to understand the law.

17. "Welsh law" is defined in section 1(3) to mean:
    a. Assembly Acts and Measures and subordinate legislation made under them (in other words, all legislation made by the National Assembly for Wales or under its authority),

    b. other subordinate legislation made by the Welsh Ministers or the old National Assembly for Wales so far as it applies in relation to Wales (in other words, any other legislation made by the devolved government in Wales), and

    c. any other enactment or rule of law so far as it applies in relation to Wales and relates to subject matter for which an Assembly Act could make provision (in other words, other legislation or common law rules which could potentially be reformed or re-enacted by the National Assembly).

18. Schedule 1 to the Act contains definitions of various terms used in section 1(3), including "enactment", "subordinate legislation" and "Wales".

Section 2 – Programme to improve accessibility of Welsh law

19. This section requires the Welsh Ministers and the Counsel General to develop a programme of action designed to improve the accessibility of Welsh law for each Assembly term that begins after the section comes into force. An Assembly term means the period from an Assembly being formed after a Welsh general election to dissolution prior to the following general election.

20. Although the specific content of a programme will be a matter for the Welsh Ministers and the Counsel General, section 2(3) requires each programme to make provision for measures that are intended to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and to facilitate use of the Welsh language.

21. Consolidating the law generally involves bringing all legislation on a particular topic together, better incorporating amendments made to legislation after it has been enacted and modernising the language, drafting style and structure. This involves no or only minor amendments to the substance of the law consolidated. In Wales consolidation of the law will involve for the most part re-enacting laws previously made by the UK Parliament, and doing so bilingually.

22. Section 2(8) provides that the references to codifying Welsh law in section 2(3) include adopting a structure for Welsh law that improves its accessibility, and organising and publishing consolidated Welsh law according to that structure.

23. The definition makes clear that codifying the law is intended to bring order to the statute book. This involves organising and publishing the law by reference to its content (and not merely when it was made), and maintaining a system under which that law retains its structure rather than proliferating. A "Code" of Welsh law would generally be published once some or all of the primary legislation on a particular subject (taking account of the legislative competence of the National Assembly) has been consolidated, or has been created afresh following wholesale reform. This should usually be accompanied by a process of rationalisation of subordinate legislation made under the primary legislation. The existing hierarchy within, and delineation between, legislative instruments (primary and secondary legislation, and guidance or other similar documents made under the Acts or subordinate legislation) would remain. All the legislation within a Code will be made in both English and in Welsh.

24. Therefore a Code would not (generally) be one legislative instrument but rather a collection of enactments under a unifying overarching title. Those enactments which make up the Code on any particular subject would be made available together. Similarly these enactments will remain the means by which the law is formally articulated. The Code is not intended to be a legal instrument in its own right but rather a means of collating and publishing the law more effectively.

25. References in section 2(3) to "codifying" the law mean, generally speaking, the codification of statute law (legislation). Although a Bill that codifies statute law might incorporate the effect of case law on the meaning of the legislation being consolidated and codified, or rules of common law that are closely related to that legislation, the Welsh Government does not intend to undertake wholesale codification of the common law.

26. Section 2(3) provides that each programme must also include proposals to promote awareness and understanding of Welsh law. This might, for example, include raising awareness of significant changes in the law or of the existence of Welsh law more generally.

27. Section 2(3) also requires each programme to include activities intended to facilitate use of the Welsh language. This is intended to include facilitation of the language in the law, in public administration and more generally. A key aspect of this will be consolidating the law bilingually so that much more of the law for which the National Assembly and Welsh Government are responsible is made in Welsh. Similarly, improving publication arrangements and providing more commentary on the law in both languages will make it easier for the Welsh language to be used in the law and in public administration more generally in Wales. Other projects in a future programme could include making more glossaries for legislation available and further initiatives to develop agreed terminology where this is helpful.

28. Section 2(5) requires a programme to be laid before the National Assembly within six months of the appointment of the First Minister following a general election. This is intended to ensure that each government can be held accountable for what its programme achieves over an Assembly term.

29. Although a new government is not required to inherit the programme of the previous government at the beginning of an Assembly term, in practice, projects from one programme will almost certainly continue until the next programme is prepared and laid, and there is nothing to prevent projects from an earlier programme appearing in a subsequent programme where the timeframe for completing such a project requires that. Some of the individual projects to consolidate and codify the law on a subject will be long term in nature, and could take more than one Assembly term to complete.

30. Section 2(7) requires the Counsel General to make annual reports to the National Assembly on progress against the programme. Such reporting could be made through a statement to the Assembly, which would enable Assembly Members to ask questions of the Counsel General on the report.

31. A programme set out at the beginning of the Assembly term may need to be varied during that term. New projects could be added, or perhaps existing projects removed if they were found not to be suitable for consolidation in light of related legislative reform. Section 2(6) provides that the Welsh Ministers and Counsel General may revise a programme during the Assembly term, but that revised programme must be laid before the National Assembly and again reported against.

PART 2: INTERPRETATION AND OPERATION OF WELSH LEGISLATION

32. Part 2 of the Act makes provision about the interpretation and operation of legislation made by the National Assembly for Wales or under powers it has conferred, and other subordinate legislation made by the Welsh Ministers and other devolved Welsh authorities.

33. The position before Part 2 comes into force is that the Interpretation Act 1978 ("the 1978 Act") governs the interpretation and operation of legislation of these types. The 1978 Act will continue to apply to legislation that has been made before Part 2 comes into force. Part 2 will apply only to legislation made after Part 2 comes into force (and to the Act itself).

34. The 1978 Act will also continue to apply to some very limited categories of instrument that are made by the Welsh Ministers and other devolved Welsh authorities under certain powers after Part 2 of the Act comes into force, if those instruments also contain provisions that are made by bodies that are not devolved Welsh authorities or provisions that apply otherwise than in relation to Wales.

35. Part 2 of the Act begins by identifying the legislation to which it applies. Part 4 of the Act amends the 1978 Act to ensure that it does not apply to legislation to which Part 2 applies, and to deal with some of the interactions between legislation to which the 1978 Act applies and legislation to which Part 2 applies.

36. Most of the provisions in Part 2 of this Act are intended to have the same effect as provisions in the 1978 Act, even if they are expressed in different terms. However, there are a number of differences which are identified and described in these Explanatory Notes.

Section 3 – Legislation to which this Part applies

37. Section 3(1) sets out the legislation to which Part 2 of the Act applies. Part 2 applies to the Act itself, to Assembly Acts that receive Royal Assent after Part 2 comes fully into force, and to Welsh subordinate instruments made after Part 2 comes fully into force. Part 2 will be brought fully into force by an order made by the Welsh Ministers under section 43(2).

38. A "Welsh subordinate instrument" is defined in section 3(2) as an instrument containing only one or both of the types of subordinate legislation described in paragraphs (a) and (b). An instrument which contains any subordinate legislation not falling within either of those paragraphs will not be a "Welsh subordinate instrument" (and will instead be subject to the 1978 Act).

39. The subordinate legislation within paragraph (a) is any subordinate legislation made under an Assembly Act or Assembly Measure, regardless of who makes it. This paragraph covers any subordinate legislation made under powers conferred by primary legislation passed by the National Assembly for Wales. It does not matter when the primary legislation was enacted.

40. Where subordinate legislation is made under an Assembly Act enacted after Part 2 of the Act comes into force, Part 2 will apply to both the parent Act and the subordinate legislation. But where subordinate legislation is made under an Assembly Measure or an Assembly Act enacted before Part 2 comes into force, the 1978 Act will continue to apply to that Measure or Act, while Part 2 of this Act will apply to the subordinate legislation. Nothing in Part 2 will change the meaning or effect of the Measure or Act under which the subordinate legislation is made.

41. The subordinate legislation within paragraph (b) of the definition of "Welsh subordinate instrument" is subordinate legislation that:

    a. is made under an Act of the UK Parliament or retained direct EU legislation,

    b. is made only by the Welsh Ministers or any other devolved Welsh authority, and

    c. applies only in relation to Wales.

42. Where the subordinate legislation is made under an Act of the UK Parliament, the 1978 Act will continue to apply to the parent Act, but Part 2 of this Act will apply to the subordinate legislation. Nothing in Part 2 will change the meaning or effect of the Act of Parliament under which the subordinate legislation is made.

43. Similarly, Part 2 will apply to certain subordinate legislation that is made under "retained direct EU legislation" but not to the "retained direct EU legislation" itself. Schedule 1 to the Act defines "retained direct EU legislation" by reference to the European Union (Withdrawal) Act 2018, which provides for certain EU legislation (including regulations and decisions) to be retained in domestic law on "exit day". The 2018 Act also confers powers to amend that legislation so that it contains powers to make subordinate legislation.

44. The "devolved Welsh authorities" to which paragraph (b) refers are defined in section 157A of the Government of Wales Act 2006, and include all of the bodies listed in Schedule 9A to that Act. They include county and county borough councils, National Park authorities, Natural Resources Wales, and other devolved bodies that have powers to make orders, rules, schemes or byelaws.

45. An instrument will not be a "Welsh subordinate instrument" if it contains subordinate legislation made under an Act of the UK Parliament or retained direct EU legislation by a person or body that is not a devolved Welsh authority. Therefore "Welsh subordinate instruments" do not include instruments made jointly by the Welsh Ministers and a Secretary of State, or "composite" instruments in which the Welsh Ministers legislate for Wales and a Secretary of State legislates for England.

46. An instrument will not be a "Welsh subordinate instrument" if it contains subordinate legislation that is made under an Act of the UK Parliament or retained direct EU legislation and applies otherwise than in relation to Wales. It is possible that an Act of Parliament may confer functions on the Welsh Ministers in relation to an area that extends beyond the boundaries of Wales, such as the part of the Welsh zone that lies beyond the territorial sea. In addition, Part 1 of Schedule 3 to the Government of Wales Act 2006 provides that functions may be transferred to the Welsh Ministers in relation to English border areas and waters beyond the seaward boundary of the territorial sea.

Section 4 – Effect of provisions in this Part

47. Part 2 of the Act provides a set of presumptions or default provisions about the meanings and effects that Assembly Acts and Welsh subordinate instruments are intended to have. Section 4 makes provision about the operation of the rules in Part 2 in relation to a particular Assembly Act or Welsh subordinate instrument.

48. Even where Part 2 applies to an Assembly Act or Welsh subordinate instrument (i.e. it is enacted after Part 2 of this Act comes into force), some of the rules in Part 2 may be modified or excluded in relation to the particular Act or instrument. Section 4(1) provides that most of the rules in Part 2 have effect in relation to an Act or instrument except so far as "(a) express provision is made to the contrary or (b) the context requires otherwise". This corresponds to the various provisions in the 1978 Act which state that rules in that Act apply unless "the contrary intention appears".

49. Paragraph (a) relates to the situation where it is expressly provided that any of the rules in Part 2 of this Act do not apply to an Act or instrument, or where there is other express provision that is inconsistent with any of the rules in Part 2. For example, an Assembly Act or Welsh subordinate instrument might use a term that is defined in Schedule 1 to this Act, but give the term a different definition. In that case, paragraph (a) makes clear that the definition in Schedule 1 would not apply.

50. The express provision to the contrary will commonly be contained in the particular Assembly Act or Welsh subordinate instrument that is being considered, but it may sometimes be found in another piece of legislation. For example, it is possible that the operation of one of the default provisions in Part 2 in relation to a particular Act or instrument might be excluded by an express provision in another Act or Measure of the Assembly or in an Act of the UK Parliament.

51. Paragraph (b) relates to the situation where the context requires an Act or instrument to be interpreted or given effect in a different way from that set out in Part 2. For example, there may be cases where an Assembly Act or Welsh subordinate instrument uses a term defined in Schedule 1 to this Act without providing an alternative definition, but the way in which the term is used, or some other aspect of the context of the Act or instrument, indicates that the term must be intended to have a different meaning.

52. Section 4(2) provides that the exception in section 4(1) does not apply in relation to section 5 (equal status of texts of bilingual legislation).

53. Section 4(3) provides that paragraph (b) of the exception in section 4(1) does not apply to sections 10 (time of day), 28 (application of Welsh legislation to the Crown) and 33 (revival of law previously repealed or abolished). This means that the default provisions in those three sections can only be excluded by express words to the contrary (and not by implication from the context).

Section 5 – Equal status of Welsh and English language texts

54. Section 5 provides that, where an Assembly Act or Welsh subordinate instrument is enacted in both Welsh and English, the two language texts have equal status for all purposes. This means that the full expression of the law is that contained in both texts, not merely one.

55. The practice of legislating bilingually for Wales is well established. In particular, Assembly Acts must be in both Welsh and English, and subordinate legislation made by the Welsh Ministers is, almost without exception, made in both languages[1].

56. Section 156(1) of the Government of Wales Act 2006 currently provides for the equal status of the Welsh and English language texts of bilingual legislation. Section 5 of the Act restates that provision, so far as it applies to Assembly Acts and Welsh subordinate instruments to which Part 2 of this Act applies.

57. Like section 156(1) of the 2006 Act, section 5 of this Act applies for all purposes and not only for the purpose of interpretation. However, the equal status of the texts has a number of implications for the interpretation of bilingual legislation. These were considered by the Law Commission in its consultation paper and final report on *Form and Accessibility of the Law Applicable in Wales*[2]. It is particularly important to appreciate that if there is any doubt about the meaning of Welsh legislation, it will be necessary to take both language versions into account to determine what the legislation means. This is something that affects all those concerned with the making, implementation, administration and interpretation of Welsh legislation.

58. The effect of section 5 is not subject to the exception in section 4(1). In other words, the Act does not provide for the rule in section 5 to be excluded in cases where provision is made to the contrary or the context requires otherwise. This is to ensure that section 5 has the same effect as section 156(1) of the 2006 Act.

59. Section 5 restates section 156(1) of the 2006 Act only for legislation to which Part 2 of this Act applies. Section 156(1) will continue to apply to Assembly Measures, and to Assembly Acts and Welsh subordinate instruments to which Part 2 of this Act does not apply (principally those enacted before Part 2 is fully in force). Part 4 of this Act amends section 156(1) of the 2006 Act to avoid any overlap with section 5.

[1] An Assembly Bill must be in both languages when it is introduced and when it is passed: see Standing Orders 26.5 and 26.50 of the National Assembly for Wales, and section 111(5) of the Government of Wales Act 2006. For statutory instruments which are laid before the National Assembly, a failure to produce an instrument in both languages is a ground for drawing it to the attention of the National Assembly: see Standing Order 21.2(ix).

[2] See Chapter 12 of Law Commission Consultation Paper No 223 (July 2015), and Chapter 12 of Law Commission Report Law Com No 366 (June 2016).

Section 6 and Schedule 1 – Definitions of words and expressions

60. Section 6 provides that the words and expressions set out in Schedule 1 (which it introduces) have the meaning given in that Schedule where they are used in Assembly Acts and Welsh subordinate instruments to which Part 2 of the Act applies. The terms listed in Schedule 1 are ones that are expected to be used in Welsh legislation and to have a consistent meaning.

61. Schedule 1 contains definitions of:

a. terms relating to legislation (e.g. "Assembly Act", "enactment" and "subordinate legislation");

b. terms relating to central government and public bodies (e.g. "Welsh Ministers", "Natural Resources Wales" and "Minister of the Crown");

c. terms relating to criminal offences and courts (e.g. "summary offence", "county court" and "High Court");

d. terms relating to the European Union and Brexit (e.g. "EU instrument", "retained direct EU legislation" and "member State");

e. other basic legal terms (e.g. "land", "person", "Wales", "writing" and "working day").

62. Schedule 1 to the Act is similar to Schedule 1 to the 1978 Act, but it does not include terms listed in Schedule 1 to the 1978 Act that are irrelevant to Welsh legislation, such as "Bank of Ireland". On the other hand, it includes some terms that do not appear in Schedule 1 to the 1978 Act but which are likely to be relevant to Welsh legislation, such as "Welsh Ministers".

63. Where Schedule 1 to the Act defines a word or expression that is also defined in Schedule 1 to the 1978 Act, the definition given in this Act is usually intended to have the same effect as that in the 1978 Act even if it appears different from the equivalent definition in the 1978 Act.

64. However, there are some definitions that appear in both Schedule 1 to the Act and Schedule 1 to the 1978 Act which are different in this Act:

a. The definitions of various courts in this Act include only the courts that operate within the jurisdiction of England and Wales, whereas the definitions in the 1978 Act also include the equivalent courts in Northern Ireland.

b. Whereas the definition of "financial year" in the 1978 Act is limited to certain references relating to public money, the definition in this Act will apply for all purposes. However, in practice references to financial years in Welsh legislation nearly always relate to the financial years of public bodies.

c. The definition of "Wales" in the Act is intended to reproduce the effect of the definition in the Government of Wales Act 2006 (set out in section 158(1) of that Act). The definition of "Wales" in the 1978 Act is limited to the local authority areas in Wales, but the 2006 Act expands that definition to include "the sea adjacent to Wales out as far as the seaward boundary of the territorial sea". As the Government of Wales Act 2006 deals with the powers of the National Assembly for Wales to make legislation, this Act provides for the default definition of "Wales" to be in line with the definition in the 2006 Act (but using slightly different language in order to be more consistent with other legislation that refers to the sea).

65. Some definitions in Schedule 1 refer to provisions in Acts of the UK Parliament or in other UK legislation, all of which are enacted only in English. The Welsh language text of Schedule 1 refers to those Acts and other legislation using Welsh translations of their titles (or "courtesy titles") rather than the original titles in English. The Welsh language version of these Explanatory Notes lists the courtesy titles that have been used for Acts and other legislation mentioned in Schedule 1.

66. By virtue of section 4(1) of the Act, section 6(1) and Schedule 1 have effect except to the extent that express provision is made to the contrary or the context requires otherwise. An Assembly Act or Welsh subordinate instrument may therefore give a term listed in Schedule 1 a different meaning from that in Schedule 1.

67. Section 6(2) provides for a power to amend the Schedule. This would allow definitions to be added to the Schedule where it would be helpful to do so, or to reflect legislative changes that affect the meaning of terms listed in the Schedule. Under section 42 of the Act, this power would be subject to the affirmative procedure.

Section 7 – Words in the singular include the plural and vice versa

68. Section 7 means that, where an Assembly Act or Welsh subordinate instrument refers to a noun in either the singular or the plural, the reference will usually cover both forms of the noun. It therefore removes the need for legislation to use phrases like "a person or persons" in most contexts. This provision is relied on in most, if not all, legislation, and helps to facilitate shorter, more accessible drafting.

69. This section has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It is equivalent to section 6(c) of the 1978 Act.

Section 8 – Words denoting a gender are not limited to that gender

70. Section 8 means that words in Assembly Acts and Welsh subordinate instruments which could be read as being limited to persons of a specific gender are not to be read as being limited in that way. The purpose of the section is to ensure that legislation is not too narrow in its application, and that even wording and phrasing which might traditionally have been considered gender-neutral (such as "he or she") does not exclude anyone, regardless of their gender identity.

71. Section 8 has effect except to the extent that express provision is made to the contrary or the context requires otherwise, so it will not be relevant where an Act or instrument clearly intends to refer to persons of a particular gender.

72. This section is equivalent to section 6(a) and (b) of the 1978 Act, but it does not refer expressly to the male and female genders and therefore has a wider scope.

Section 9 – Variations of a word or expression due to grammar etc.

73. Section 9 makes clear that, where an Assembly Act or Welsh subordinate instrument defines a word or expression, parts of speech relating to the word or expression also carry the definition. For example, if the word *"walk"* is defined, then the parts of speech relating to *"walk"*, such as *"walking"* and *"walker"*, are to be interpreted in the light of that definition.

74. It often goes without saying that a definition applies in these circumstances. In some cases though this needs to be put beyond doubt. See for example the definition of *"education"* in section 99(1) of the Additional Learning Needs and Education Tribunal (Wales) Act 2018, which makes provision about the application of that definition in relation to *"educate"* and *"educational"*. Section 9 of this Act makes general provision about the application of definitions, to avoid ambiguity and remove the need to make separate provision in individual Acts and instruments.

75. Section 9 will also put beyond doubt that a definition of a word or expression applies despite any variation of that word or expression arising due to the operation of rules of grammar. In relation to the Welsh language text of legislation, this section will make it clear that a definition or meaning applies regardless of any mutations of a word, or variations of an expression arising due to rules about word order and sentence structure.

76. Section 9 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It has no equivalent in the 1978 Act.

Section 10 – References to time of day

77. Section 10 provides that a reference to a particular time of day (such as 2pm or 2am) is a reference to Greenwich mean time, except during the period when British summer time applies, when the reference is to British summer time (that is, the time fixed for general purposes during the period of summer time by section 1 of the Summer Time Act 1972).

78. The effect of this section is subject to paragraph (a) of the exception in section 4(1), but not to paragraph (b) of that exception. The result is that section 10 will apply to a reference to the time of day unless legislation expressly provides that the reference is not to Greenwich mean time or (in summer) British summer time. This might arise in a provision which needs to refer to the time outside the United Kingdom. This section is equivalent to section 9 of the 1978 Act.

Section 11 – References to the Sovereign

79. Section 11 is intended to ensure that references to the Sovereign in Assembly Acts and Welsh subordinate instruments remain up to date. Where legislation refers to the monarch, it usually does so by reference to the individual reigning at the time when the legislation is enacted. It may therefore refer to "the Queen" or "the King" or to "His Majesty" or "Her Majesty". In the event of a change of Sovereign, this section will operate in relation to such references so that they continue to apply to the current monarch.

80. Section 11 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It corresponds to section 10 of the 1978 Act.

Section 12 – Measurement of distance

81. This section provides that distances referred to in Assembly Acts and Welsh subordinate instruments are to be measured horizontally and in a straight line. It has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It is equivalent to section 8 of the 1978 Act.

Section 13 – Service of documents by post or electronically

82. Section 13 contains basic provisions about the service of documents by post and electronically. It does not itself authorise or require any type of document to be served using postal services or electronic communications. It applies only where an Assembly Act or a Welsh subordinate instrument provides for service by either or both of those methods. It is for individual Acts and instruments to determine whether those methods of service, or any others, are permitted in particular contexts.

83. Section 13(1) will apply wherever an Assembly Act or Welsh subordinate instrument provides that a document may or must be served (or given or sent etc.) by post. It means that, if the person who is to serve the document takes certain steps, the person will be regarded as having served the document.

84. Subsection (1) requires the sender to "properly address" the letter containing the document. This is intended to mean that the postal address of the intended recipient appears correctly on the letter. If it is necessary to specify which of a recipient's addresses can be used, for example in relation to a company with multiple offices, it will be for the relevant Act or instrument to make provision about that issue.

85. Subsection (2) takes a similar approach to subsection (1), but in relation to service of documents using methods of electronic communication. It will only apply where an Assembly Act or Welsh subordinate instrument provides that a document may or must be sent electronically. This will include sending documents by email, fax or any other method of electronic communication.

86. The concept of "properly addressing" an electronic communication in subsection (2)(a) is intended to require the sender to make sure that the email, fax or other communication is sent to an email address, fax number or other electronic address which is valid and which the recipient can be reasonably expected to access, and that the address has been entered accurately. If additional requirements are wanted in particular cases, such as prior consent for service by electronic communications, they will need to be set out in the relevant Act or instrument.

87. Subsection (2)(a) allows for the attachment of documents to an electronic communication, as well as for the electronic communication itself to be the document which is being served. It is not intended to allow service to be effected electronically by sending someone a link to a document hosted on the internet, which the recipient must then take further steps to access.

88. Section 13 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It (together with section 14) corresponds to section 7 of the 1978 Act.

Section 14 – Day on which service is deemed to be effected

89. This section provides for the day on which a document served electronically or by post is deemed to be served. It creates a presumption that the document was served on that day, but this can be rebutted by evidence to the contrary.

90. Section 14 relies on the concept of "the ordinary course of post" for the purposes of deeming when service by post is effected. This concept is intended to operate with any postal service that may be used, including service using first class or second class post, or some other means of expedited postal delivery. In each case, when post is used, the sender can determine the day on which service is deemed to take place by reference to normal delivery times for the service chosen.

91. This section also deals with the deemed date of service of documents served using electronic communications. In order to reflect the near instantaneous nature of most electronic communication, the document is deemed to be served on the day it is sent.

92. Section 14 provides for the "day" on which service is deemed to take place, because periods of time specified in Welsh legislation are normally periods of whole days. If there were a case where it was necessary to identify the precise time of day at which a document was served, the relevant Assembly Act or Welsh subordinate instrument would need to make provision about that question.

Section 15 – Continuity of powers and duties

93. Section 15 puts beyond doubt that powers conferred and duties imposed on a person are continuous, and may be exercised from time to time and as necessary. It applies to all powers and duties conferred or imposed by Assembly Acts and Welsh subordinate instruments to which Part 2 applies, including powers and duties to make subordinate legislation.

94. Section 15 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It is equivalent to section 12 of the 1978 Act, which will continue to apply to powers and duties conferred or imposed by Assembly Acts that receive Royal Assent before Part 2 of the Act comes into force, or by subordinate legislation made before then.

Section 16 –Exercise of a power or duty that is not in force

95. Subsections (1) and (2) of section 16 provide that powers and duties under provisions of Assembly Acts and Welsh subordinate instruments may be exercised before those provisions come into force. By virtue of subsection (1)(a), the section applies to provisions of Assembly Acts if they come into force at a time which is specified in the Act and is more than one day after the day of Royal Assent (but not to provisions which come into force sooner or are brought into force by order or regulations).

96. Section 16(3) sets out the purposes for which the power or duty can be exercised before the relevant provision comes into force.

97. Section 16(4) allows for reliance on other provisions in the Act or Welsh subordinate instrument which are not in force but which are incidental or supplementary to the provision granting the power or imposing the duty.

98. Section 16(5) makes it clear that any limitations or conditions which would apply to the exercise of the power or discharge of the duty if the Act or instrument were fully in force also apply when the power or duty is exercised in reliance on section 16.

99. Section 16 has effect except to the extent that express provision is made to the contrary or the context requires otherwise.

100. This section is equivalent to section 13 of the 1978 Act, but it contains a number of differences intended to clarify its scope. In particular, section 16 does not apply where a power or duty is to be brought into force by order or regulations; it makes clear exactly when it enables the power or duty to be exercised; and it provides that the power or duty is to be exercised in the same way as if the provisions conferring or imposing it were in force.

101. Section 13 of the 1978 Act will continue to apply to powers and duties conferred or imposed by Assembly Acts that receive Royal Assent before Part 2 of this Act comes into force, and by subordinate legislation made before then.

Section 17 – Inclusion of sunset provisions and review provisions in subordinate legislation

102. Section 17 puts beyond doubt that the Welsh Ministers, or any other person making subordinate legislation under an Assembly Act, may provide in the subordinate legislation:

a. for the legislation to cease to have effect at a specified time or at the end of specified period (a "sunset provision");

b. for the person who made the legislation to be required to review the effectiveness of the legislation (a "review provision").

103. Section 17 applies to powers and duties to make subordinate legislation under Assembly Acts that receive Royal Assent after Part 2 of the Act comes into force. It has effect except to the extent that express provision is made to the contrary or the context requires otherwise.

104. This section is equivalent to section 14A of the 1978 Act, which will continue to apply to powers and duties to make subordinate legislation conferred or imposed by Assembly Measures, by Assembly Acts that receive Royal Assent before Part 2 comes into force, and by Acts of the UK Parliament.

Section 18 – Revoking, amending and re-enacting subordinate legislation

105. Section 18 applies where an Assembly Act confers a power or imposes a duty to make subordinate legislation. It provides general powers to amend, revoke and re-enact subordinate legislation.

106. Section 18 applies to powers and duties to make subordinate legislation under Assembly Acts that receive Royal Assent after Part 2 of the Act comes into force. It has effect except to the extent that express provision is made to the contrary or the context requires otherwise.

107. Section 18 is equivalent to section 14 of the 1978 Act, but there are a number of differences. Section 14 applies to subordinate legislation other than rules, regulations and byelaws only if that subordinate legislation is made by statutory instrument, but that limitation has not been included in section 18 of the Act. Section 18(2) also refers expressly to subordinate legislation made in the discharge of a duty, and limits the power to revoke and amend to the extent necessary to ensure that the duty to make the subordinate legislation cannot be undermined.

108. Like section 17 of the Act, section 18 will not apply where the Welsh Ministers or other devolved Welsh authorities make subordinate legislation under Assembly Measures, under Assembly Acts that receive Royal Assent before Part 2 of the Act comes into force, or under Acts of the UK Parliament. In those cases, section 14 of the 1978 Act will continue to apply in relation to the power or duty to make the subordinate legislation.

Section 19 – Amendment of subordinate legislation by an Assembly Act

109. Section 19 applies where an Assembly Act amends or revokes subordinate legislation. Where this happens, it can give rise to questions about whether the amendment or revocation is in some way intended to limit the future exercise of the power under which the subordinate legislation is made. Sometimes express provision is made in the Assembly Act to remove any doubt about this, but the general rule in section 19 will make this unnecessary.

110. Section 19 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It has no equivalent in the 1978 Act.

Section 20 – Varying and withdrawing directions

111. Most legislation which confers a power or imposes a duty to given directions contains provision about varying and withdrawing those directions. Even in instances where no express provision about variation or withdrawal of directions has been made, it may be possible to interpret the legislation as permitting the variation or withdrawal of directions given under it.

112. Section 20 removes any doubt about whether directions can be varied or withdrawn, and avoids the need to state this expressly every time a power or duty to give directions is created. This is intended to improve consistency across the legislation to which Part 2 of the Act applies.

113. This section has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It has no equivalent in the 1978 Act.

Section 21 – References to portions of enactments, instruments and documents

114. Section 21 applies where an Assembly Act or Welsh subordinate instrument refers to a portion of text in any enactment, instrument or document. For this purpose, an "enactment" has an extended meaning and includes any of the types of legislation that may apply in the United Kingdom. An "instrument" will include any kind of legal instrument, legislative or otherwise, such as an EU instrument, Royal Charter or deed.

115. Section 21 is intended to remove any doubt about the precise portion of text in the enactment, instrument or document that is being referred to. This is particularly useful in relation to provisions in legislation which make amendments. For example, in the case of a provision which states "In section 1, for the words from "the local authority" to "officer" substitute "the county council may appoint two or more officers""; section 21 puts beyond doubt that the substituted text starts with, and includes, "the local authority", and ends with, and includes, "officer".

116. Section 21 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It is equivalent to section 20(1) of the 1978 Act, but applies to references to a wider range of instruments and documents.

Section 22 – Edition of Assembly Act or Assembly Measure referred to

117. Section 22 applies to any reference to an Assembly Act or Measure in an Assembly Act or Welsh subordinate instrument to which Part 2 of this Act applies. It enables readers of the Assembly Act or Welsh subordinate instrument to know which "edition" of the Act or Measure is being referred to.

118. Section 22 is equivalent to section 19(1) of the 1978 Act (when read with section 23B of that Act). Unlike the provisions in the 1978 Act, section 22 refers to the Act or Measure "published", rather than "printed". This is intended to reflect changes in arrangements. In the past, the Queen's Printer (or a person acting under the superintendence or authority of Her Majesty's Stationery Office) would have printed a version of an Act as it stood on receiving Royal Assent. This would have been, for all intents and purposes, the definitive version of the Act, and could be obtained from The Stationery Office. While that is still the case today, Acts are also made available on the legislation.gov.uk website, in a form which reflects exactly the version of the Act which is printed. This is now how the vast majority of people access and read an Act.

119. In practice, however, the legislation.gov.uk website updates Acts in order to incorporate amendments made to those Acts (while generally keeping the original, "as enacted" version of the Act available). These updates mean that the printed version of the Act and the online version of the Act will diverge. In order to avoid confusion, and to avoid having a different effect from section 19(1) of the 1978 Act (which still refers to the printed versions of Acts), section 22 refers to:

a. the certified copy of an Assembly Act which is made and sent to the Queen's Printer under section 115(5D) and (5E) of the Government of Wales Act 2006 once the Bill has received Royal Assent, and

b. an Assembly Measure as it stood when it was approved by Her Majesty in Council (see section 102 in Part 3 of the Government of Wales Act 2006, which is now repealed; but section 106 of that Act makes saving provision in relation to the repeal of Part 3 of that Act, which is now continued by paragraph 5 of Schedule 7 to the Wales Act 2017).

120. In other words, section 22 provides that references to an Assembly Act or Measure are to the version of the Act or Measure published by the Queen's Printer etc. which reflects the Act or Measure as it stood at the moment it ceased to be a Bill or proposed Measure and was enacted as an Act or Measure.

121. Where an Assembly Act or Measure has been amended, this section must be read with section 24, so that a reference to the Act or Measure is a reference to the version published by the Queen's Printer etc., as subsequently amended.

Section 23 – Edition of Act of the Parliament of the United Kingdom referred to

122. Section 23 makes similar provision to section 22, but for references in Assembly Acts and Welsh subordinate instruments to Acts of the UK Parliament. It enables readers of Welsh legislation to determine, where that legislation refers to an Act, what "edition" of that Act is being referred to. As in section 22, the concept of publishing rather than printing is relied on.

123. Section 23 is equivalent to section 19(1) of the 1978 Act, but the citations to which it applies are described in more general terms. Section 19(1) refers to citations of Acts of the UK Parliament "by year, statute, session or chapter". This was of particular value in a historical context; there were sometimes different editions of Acts and statutes, and in those Acts and statutes the numbering and order of provisions sometimes differed between the editions. However section 19(1) is understood to apply generally to all references to an Act of the UK Parliament. Therefore section 23 does not say that it is limited to cases where Acts are cited in particular ways.

Section 24 – References to direct EU legislation retained in domestic law after EU exit

124. Section 3 of the European Union (Withdrawal) Act 2018 provides for direct EU legislation that is operative immediately before exit day to be retained in the domestic law of the United Kingdom on and after exit day (in other words, once the United Kingdom ceases to be a member of the EU). The effect is that from exit day there are two versions of any direct EU legislation: the version that is retained in the domestic law of the UK (and which may be amended by other domestic law), and the version that forms part of EU law and applies in the remaining EU member States.

125. Section 24 applies where an Assembly Act or Welsh subordinate instrument enacted on or after exit day refers to a piece of direct EU legislation that has been retained in domestic law. It makes clear that the default position is that the reference is to the legislation as it forms part of domestic law, and not as it forms part of EU law. Section 25 will mean that the reference is also to the legislation as amended by any other domestic law at any time.

126. The direct EU legislation retained in domestic law consists of EU regulations, EU decisions and EU tertiary legislation, as well as certain provisions of the EEA agreement that have effect in EU law. Section 3 of the 2018 Act specifies the extent to which this legislation is retained in domestic law, and section 20(1) of that Act defines the phrases "domestic law", "EU decision", "EU regulation" and "EU tertiary legislation". Those definitions are applied for the purposes of section 24 of the Act.

127. Section 20(1) of the 2018 Act also makes provision about the meaning of "exit day". That provision is applied generally to Assembly Acts and Welsh subordinate instruments by Schedule 1 to the Act.

128. Section 24 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. Its effect will therefore be overridden if an Assembly Act or Welsh subordinate instrument refers to a piece of EU legislation that has been retained in domestic law, but clearly intends to refer to the version of that legislation that continues to apply in the EU. If the reference is to the legislation as it forms part of EU law, section 25 will not be relevant but section 26 may be.

Section 25 – References to enactments are to enactments as amended

129. Section 25 addresses the situation where an Assembly Act or Welsh subordinate instrument refers to other legislation, and that other legislation is amended, whether before or after the Act or instrument is enacted.

130. Section 25 is equivalent to section 20(2) of the 1978 Act, but it seeks to clarify the extent to which its effect is "ambulatory" (i.e. the extent to which it applies to a reference to legislation which is later amended).

131. Like section 20(2) of the 1978 Act, section 25 of this Act deals with the following situation:

a. Act 1 is passed
b. Act 2 subsequently amends Act 1;
c. Act 3 is passed after Act 2, and contains a reference to Act 1.

In this case, the reference in Act 3 is a reference to Act 1 as amended by Act 2.

132. Section 25 also makes clear that it applies in the following case:

a. Act 1 is passed
b. Act 2 subsequently amends Act 1;
c. Act 3 is passed after Act 2, and contains a references to Act 1;
d. Act 1 is amended again, by Act 4.

Under section 25, the reference in Act 3 to Act 1 becomes a reference to Act 1 as amended by Act 4.

133. Section 25 applies to any reference to an enactment. An "enactment" is defined in Schedule 1 to the Act to include various types of primary and secondary legislation, and also to include retained direct EU legislation. Section 25 therefore applies to references to direct EU legislation retained in domestic law on and after exit day. This means that from exit day onwards a reference in an Assembly Act or a Welsh subordinate instrument to a piece of direct EU legislation as it has been retained in domestic law will include any amendments made to that legislation in domestic law, whether before or after the Act or instrument was enacted.

134. Like section 21 of the Act, this section extends the definition of "enactment" given in Schedule 1, meaning that it will also apply to references in Assembly Acts and Welsh subordinate instruments to a range of other kinds of legislation existing across the United Kingdom.

135. Section 25 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. Section 25(3) makes clear that the operation of section 25 is not limited by anything in sections 22 to 24 of the Act, which make provision about the versions of Acts, Measures and direct EU legislation that are being referred to. Section 25 applies in addition to those sections.

Section 26 – References to EU instruments

136. Section 26 provides that where an Assembly Act or Welsh subordinate instrument to which Part 2 applies refers to an EU instrument, and that instrument was amended by another EU instrument before the Act received Royal Assent or the Welsh subordinate instrument was made, the reference to the EU instrument is to that instrument as amended. Unlike section 25, its effect is not "ambulatory". In other words, if the EU instrument is amended after the Assembly Act receives Royal Assent or the Welsh subordinate instrument is made, the reference to the EU instrument is not then treated as a reference to the EU instrument as amended.

137. "EU instrument" is defined in Schedule 1, and means any instrument issued by any institution of the European Union, but from exit day onwards it excludes any retained direct EU legislation. EU instruments that become retained direct EU legislation on exit day under the European Union (Withdrawal) Act 2018 are instead treated from that point onwards as "enactments" (and references to them are therefore to be interpreted in accordance with section 25 rather than section 26).

138. Therefore, if Part 2 of this Act comes fully into force after exit day, section 26 will apply only where an Assembly Act or Welsh subordinate instrument refers to a specific EU instrument as it forms part of EU law, and not where an Act or instrument refers to any direct EU legislation as it has been retained in domestic law. (If it refers to retained direct EU legislation, section 25 will apply instead.)

139. If Part 2 comes into force before exit day, the position will be more complicated.

a. In an Act or instrument enacted before exit day, references to specific EU instruments will initially be interpreted in accordance with section 26. But from exit day, they will instead be governed by regulation 2 of the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019. As a result, certain references to instruments that are retained in domestic law will become references to those instruments as they form part of domestic law.

b. In an Act or instrument enacted on or after exit day, a reference to a specific piece of EU legislation will be subject to section 26 if it refers to the legislation as it forms part of EU law, and to section 25 if it refers to the legislation as it forms part of domestic law (which will be the default position by virtue of section 24).

140. For the purposes of the Act, an EU directive will only ever be an "EU instrument", whether before or after exit day, because directives are not direct EU legislation and are not retained in domestic law. However, most EU regulations and decisions will be "EU instruments" before exit day, but will also be "enactments" on and after exit day because they become retained direct EU legislation.

141. Section 26 is equivalent to section 20A of the 1978 Act. It has effect except to the extent that express provision is made to the contrary or the context requires otherwise. Accordingly, it does not prevent an Assembly Act or Welsh subordinate instrument from including an "ambulatory" reference to an EU instrument, so long as it is clear that the reference is intended to include any amendments that may be made to the instrument from time to time.

142. Where an Assembly Act or Welsh subordinate instrument enacted before exit day contains an "ambulatory" reference to an EU instrument, the effect of that reference on or after exit day will be governed by Part 1 of Schedule 8 to the European Union (Withdrawal) Act 2018.

Section 27 – Duplicated offences

143. Section 27 applies where conduct is an offence under two or more different Acts or instruments to which Part 2 applies, or is an offence under one or more Acts or instruments to which Part 2 applies as well as the common law. The effect of the section is that a person whose conduct is a criminal offence can be prosecuted and punished under any of the law in question (in other words, the various criminal offences which cover the conduct in question are without prejudice to each other). However, section 26 makes it clear that the person can only be punished once for the offence.

144. Section 27 is equivalent to section 18 of the 1978 Act. That section currently applies where a person's act or failure to act amounts to a criminal offence under any combination of two or more of the following:

a. Acts of Parliament,
b. Assembly Acts and Measures,
c. Acts of the Scottish Parliament,
d. subordinate legislation made under any of the above Acts or Measures,

or under any one or more of the above, and at common law.

145. Section 18 of the 1978 Act will continue to apply where an act or omission is an offence under an Act or Measure of the Assembly to which Part 2 of this Act does not apply or under any subordinate legislation made under those Acts or Measures, and also is an offence under any of the other kinds of legislation to which section 18 applies or at common law.

146. Section 27(2) of the Act makes clear that section 18 of the 1978 Act will also apply where an act or omission is an offence under an Act or instrument to which Part 2 of this Act *does* apply, and under any other legislation to which section 18 applies (including Acts and Measures of the Assembly and Welsh subordinate instruments to which Part 2 of this Act will not apply). Schedule 2 to this Act replaces section 23B of the 1978 Act (which governs how that Act applies in relation to Assembly Acts and Measures) with new sections 23B and 23C. In section 23C, subsection (3) is intended to achieve this result.

147. Section 27 of the Act has effect except to the extent that express provision is made to the contrary or the context requires otherwise.

Section 28 – Application of Welsh legislation to the Crown

148. The question of whether an Act or subordinate legislation binds the Crown[3] (that is, whether or not the Crown is subject to any duty or burden imposed by the Act) can be problematic in practice. The common law rule[4] is that Acts and subordinate legislation do not bind the Crown unless:

a. the Act expressly provides that it binds the Crown,

[3] For these purposes, the Crown generally means either: the Sovereign personally; her servants and agents; and persons who are not Crown servants or agents but who for certain purpose are considered to be in an analogous position. It can also include Crown property, such as Crown land and vehicles. But the question of what amounts to the Crown for the purposes of the application of the law is not always clear.

[4] See in particular *Province of Bombay v Municipal Corporation of the City of Bombay* [1947] AC 58, *Lord Advocate v Dumbarton District Council* [1990] 2 AC 50; [1989] 3 WLR 136, and most recently *R (on the application of Black) v Secretary of State for Justice* [2017] UKSC 81 (which, in paragraph 36 and 37, contains a "clarification" of the test behind the rule).

b. the Crown is bound by necessary implication (though what amounts to a "necessary implication" for the purposes of the rule is not wholly certain), or

c. other exceptions to the rule apply (for example where the Crown is a litigant in civil proceedings, it follows from the Crown Proceedings Act 1947 that the Crown will be bound by all relevant statutes relating to civil proceedings).

149. This means that in the absence of an express provision binding the Crown, the question of whether an Act binds the Crown needs to be considered by looking at the rule and its limits, and then determining whether the nature, context and content of the Act in question mean that the National Assembly must have meant for the Crown to be bound.

150. Section 28(1) replaces the common law rule with a statutory rule. In relation to Assembly Acts to which Part 2 applies, it reverses the common law position so that the rule is that an Assembly Act does bind the Crown. Section 4(3) provides that this statutory rule is not subject to the exception in section 4(1)(b), but only to the exception in section 4(1)(a). In other words, the default rule has effect except so far as legislation expressly provides otherwise (for example, by stating that provisions in a particular Assembly Act do not bind the Crown).

151. The situation is more complex in relation to subordinate legislation, and a particular issue would arise if a Welsh subordinate instrument was subject to the rule in section 28, but the Act under which it was made was not. Section 28(2) deals with that issue by providing that a Welsh subordinate instrument to which Part 2 applies binds the Crown if it is made under an enactment which binds the Crown or which confers a power to bind the Crown. The rule for Welsh subordinate instruments is therefore that they bind the Crown wherever it is possible for them to do so. However, by virtue of section 4(3) the operation of this default rule is still subject to any express provision that is made to the contrary.

152. Where legislation provides that it binds the Crown, it usually also includes provision making clear that it does not make the Crown criminally liable, but that this does not prevent persons in the service of the Crown being criminally liable. Section 28(3) makes general provision to this effect in relation to Assembly Acts and Welsh subordinate instruments (again, subject to any express provision to the contrary).

Section 29 – Time when Welsh legislation comes into force

153. Section 29 provides that where the day on which an Assembly Act or Welsh subordinate instrument, or a provision in such an Act or instrument, comes into force is provided for in legislation, the Act or instrument comes into force at the beginning of that day.

154. In practice, the day on which an Assembly Act or a provision in an Act comes into force is usually provided for in the Act itself[5], or the Welsh Ministers are given a power to bring it into force on a specific day by making an order (usually known as a commencement order). All of these scenarios are covered by section 29.

155. Section 29 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It is equivalent to section 4(a) of the 1978 Act.

Section 30 – Day on which an Assembly Act comes into force

156. Section 30 will operate where an Assembly Act does not address the coming into force of the Act or a provision in the Act (in other words, is silent as to how or when the Act or provision comes or is brought unto force). The expectation is that this provision would not be relied on in practice; but it would operate as a useful backstop.

157. Section 30 is equivalent to section 4(b) of the 1978 Act. However under section 4(b) an Act comes into force on the day on which it receives Royal Assent, whereas under section 30 an Assembly Act or provision in an Assembly Act comes into force at the beginning of the day *after* the day on which the Act receives Royal Assent. This change removes the element of retrospectivity in section 4(b) of the 1978 Act, which could cause problems in practice, for example if a Bill received Royal Assent in the afternoon and applied retrospectively to things done that morning.

158. Like section 4(b) of the 1978 Act, section 30 of this Act does not apply to subordinate legislation. A general backstop is not considered appropriate for such legislation, given the wide range of different types of instrument and the variety of circumstances in which they can be made.

Section 31 – Orders and regulations bringing Assembly Acts into force

159. Where an Assembly Act provides for any of its provisions to be brought into force on a day appointed by order, it nearly always provides that an order may appoint different days for different purposes. Section 31 sets out this proposition generally, meaning that this provision will not need to be included on an Act-by-Act basis. This will help to shorten future Assembly Acts.

160. Section 31 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It has no equivalent in the 1978 Act.

[5] Usually by providing that the Act comes into force at the end of a certain period beginning with the grant of Royal Assent, or that it comes into force on a specific date. Occasionally, an Act will provide for the Act to come into force when a certain event or other contingency occurs.

Section 32 – Amendments made to or by Welsh legislation

161. Where one piece of legislation amends another by inserting or substituting material, questions may arise as to whether that material is to be interpreted and given effect as part of the legislation which made the amendment, or as part of the legislation into which the material has been inserted. This question may be more significant if different rules of interpretation apply to each piece of legislation (for example, if an Assembly Act or Welsh subordinate instrument to which Part 2 applies amends an Act of the UK Parliament or other legislation to which that Part does not apply).

162. The general position at common law is that the effect of an amendment is to be determined by interpreting the legislation that has been amended, rather than the amending legislation[6]. Section 31 makes express provision that is intended to reflect this common law position, for cases where an amendment is made by or to (or by and to) an Assembly Act or a Welsh subordinate instrument.

163. The common law does recognise that in some circumstances it may be necessary to refer to the amending legislation in order to interpret the legislation that it amends, in order to give effect to the intention of the legislator in enacting the amending legislation. In the Act, this is reflected in the fact that the effect of section 32 is subject to any express provision to the contrary or to the context requiring otherwise, by virtue of section 4(1).

164. Section 32 does not have any equivalent in the 1978 Act. However, section 23ZA of the 1978 Act (which is inserted by paragraph 20 of Schedule 8 to the European Union (Withdrawal) Act 2018) provides that most of that Act applies to retained direct EU legislation (other than subordinate legislation) so far as it is amended by domestic legislation including Assembly Acts and subordinate legislation.

Section 33 – Repeals and revocations do not revive law previously repealed, revoked or abolished

165. Section 33 overrides the common law rule that when an Act is repealed, it is treated as if it had never been enacted except in relation to things already done and finished under the Act.

166. This section deals with the situation where:

a. Act 1 is passed.
b. Act 2 subsequently repeals Act 1.
c. Act 3 then repeals Act 2.

167. At common law, the effect of Act 3 would be to revive Act 1. As this is rarely the desired outcome in practice, section 33 provides that in the above circumstances Act 3 does not revive Act 1.

[6] See, for example, *Inco Europe Ltd v First Choice Distribution* [1999] 1 WLR 270, at 272-273.

168. Section 33 also deals with the situation where Act 1 abolishes a rule of common law, and then Act 2 repeals Act 1. Again, the common law position would be that Act 2 revived the rule that had been abolished. Section 33 prevents the revival of the previously abolished rule.

169. Section 33 operates in relation to repeals and revocations made both by Assembly Acts and by Welsh subordinate instruments. And given the definition of "enactment" in Schedule 1, it operates where an Assembly Act or Welsh subordinate instrument repeals or revokes any Assembly Act or Measure, Act of the UK Parliament, retained direct EU legislation, or any subordinate legislation made under any of those kinds of legislation.

170. Section 33 is subject to section 4(1)(a) of the Act, but not to section 4(1)(b); so if the intention is that the rule in section 33 should not apply in relation to a particular repeal or revocation, express words will be needed to revive the earlier enactment or rule (rather than relying on the context).

171. Section 33 is equivalent to section 15 of the 1978 Act. However, section 15 applies only to the repeal of legislation which repealed another enactment, and not to the repeal of legislation which abolished a common law rule. In the 1978 Act, the latter situation is instead treated as falling within section 16(1)(a), which has a similar effect but is subject to any "contrary intention" (whether express or implied).

Section 34 – General savings in connection with repeals and revocations

172. Section 34 operates in relation to the same common law rule as section 33. Its purpose is to ensure that the repeal of a law does not mean that things which happened or matters which arose prior to the repeal are to be treated as if they were never subject to that law.

173. Where an Assembly Act or Welsh subordinate instrument repeals or revokes another enactment, section 34(2):

a. in paragraph (a), provides for a rule which is a kind of expansion of the rule in section 33, so that a repeal or revocation does not revive anything that was not previously in force (such as a contract which the repealed legislation made illegal or invalid);

b. in paragraph (b), provides more generally that the repeal or revocation operates only in relation to the future and does not affect anything done under the repealed legislation while it was in force.

174. Section 34(3) preserves rights and liabilities that arose while the legislation was in force, and enables steps to be taken to enforce those rights and liabilities after the legislation has been repealed. For example, if a person committed an offence under a law which was repealed after the offence was committed but prior to the matter being brought to trial, section 34(3) means that the person can still be tried and punished under that law.

175. Like section 33, section 34 will operate where an Assembly Act or Welsh subordinate instrument repeals or revokes any Assembly Act or Measure, Act of the UK Parliament, retained direct EU legislation, or any subordinate legislation made under any of those kinds of legislation. Unlike section 33, it will also apply where a temporary Assembly Act or Welsh subordinate instrument expires, by virtue of section 37(2).

176. Section 34 is intended to have the same effect as section 16 of the 1978 Act. The only change is that the repeal of an enactment which previously abolished a rule of common law is dealt with in section 33 rather than in this section.

177. Section 34 has effect except to the extent that express provision is made to the contrary or the context requires otherwise.

Section 35 – Effect of re-enactment

178. Section 35 operates where:

a. an Assembly Act or Welsh subordinate instrument repeals or revokes a provision in any Assembly Act or Measure, Act of the UK Parliament, retained direct EU legislation, or any subordinate legislation made under any of those types of legislation; and

b. an Assembly Act or Welsh subordinate instrument re-enacts the provision that is repealed or revoked.

179. By virtue of section 37(2), this section will also apply where a temporary Assembly Act or Welsh subordinate instrument expires and is re-enacted by another Assembly Act or Welsh subordinate instrument.

180. In those cases, section 35(2) means that a reference to the provision which has been repealed or revoked (or has expired) is to be read as a reference to the provision as re-enacted. Section 35(2) applies to references in any of the kinds of legislation mentioned above, and also to references in any other legal instrument (such as a deed, will, contract or lease) or any other document.

181. In practice, wherever possible the repealing or revoking enactment (or another enactment) would make the necessary amendments to all references to the repealed provisions. But in case that does not happen, section 35(2) will provide a useful backstop, and ensure that enactments which refer to those provisions continue to operate.

182. Section 35(3) and (4) provide that any subordinate legislation that has been made, and any other things that have been done, under a repealed provision which has been re-enacted are to be treated as having been made or done under the re-enactment.

183. Section 35 is equivalent to section 17(2) of the 1978 Act, but there are some differences between them. Section 17(2) only operates where the repeal and re-enactment are provided for in the same Act. Section 35 will operate where the repeal is provided for in one Assembly Act or Welsh subordinate instrument, and the re-enactment is provided for in a different Assembly Act or Welsh subordinate instrument. This will make it easier to rely on section 34 where necessary. For example, in a consolidation exercise it may be desirable to have one Act setting out the consolidated law, and another Act which deals with all of the repeals and consequential amendments.

184. In addition, whereas section 17(2)(a) provides that a reference to the repealed enactment "shall be construed as" a reference to the re-enacted provision, section 35(2) provides that the reference is to be read as "(or as including)" a reference to the re-enactment. This is intended to clarify that the reference may need to continue to operate as a reference to both the repealed enactment and the re-enactment. For example, if an Assembly Act amends an Act of the UK Parliament so that it no longer applies to Wales, and restates the provisions of that Act that applied to Wales, there may be references to the Act of the UK Parliament that need to be treated as references to both that Act and the new Assembly Act.

185. The reference in section 35(2) to any "instrument or document" corresponds to the provision made by section 23(3) of the 1978 Act for section 17(2)(a) to apply to "any deed or other instrument or document". Section 35(2) does not make express reference to deeds because there is no doubt that deeds are "instruments". Provisions modifying references as a consequence of legislative changes do not normally single out deeds for separate mention.

186. Section 35 has effect except to the extent that express provision is made to the contrary or the context requires otherwise.

Section 36 – Referring to an Assembly Act by its short title after repeal

187. The short title of an Assembly Act is generally provided for in a provision in the Act itself, and as its name suggests it provides a short and convenient title which can be used in other legislation to refer to the Act. Section 36 has the effect of preserving the validity of references to an Act by its short title even after the Act, and the provision which concerns its short title, have been repealed. By virtue of section 37(2), section 35 also applies to the short title of a temporary Assembly Act which expires.

188. Section 36 has effect except to the extent that express provision is made to the contrary or the context requires otherwise. It is equivalent to section 19(2) of the 1978 Act.

Section 37 – Meaning of repeal and revocation in this Part

189. Section 37 makes provision about the meaning of references to the repeal and revocation of legislation in Part 2.

190. At common law, "repeal" and "revoke" include not just express repeals and revocations, but any limitation of the effect of an enactment. This includes an Act which provides that another enactment "*ceases to have effect*" or that it no longer applies in relation to a place, person or thing; and cases where an amendment to an enactment (or the substitution of anything for the enactment) in any way limits the operation or effect of the enactment[7].

191. Section 37(1) is intended to reflect the meaning that repeal and revocation would already have at common law. It also applies to the reference to the abolition of a rule of law in section 33.

192. The effects of section 37(2) in relation to temporary legislation are discussed above in relation to sections 34 to 36. Temporary legislation is legislation that has effect only for a limited duration and which does not require additional legislative action to be taken for it to be repealed or revoked (i.e. it will repeal or revoke itself after the duration specified comes to an end).

193. The definitions in this section do not apply outside Part 2 (unlike the definitions in Schedule 1, which will apply to all Assembly Acts and Welsh subordinate instruments to which Part 2 will apply).

[7] See Report of the Law Commission and Scottish Law Commission, *Interpretation Bill* (Law Com No 90, Cmnd 7235, June 1978), Appendix, paragraph 5. In *Moakes v Blackwell Colliery Co* [1926] 2 KB 64, 70, the replacement in an Act of a reference to an amount of money with a reference to a higher amount of money was held to be a repeal.

PART 3: MISCELLANEOUS

Section 38 – Power to replace descriptions of dates and times in Welsh legislation

194. Section 38(1) gives the Welsh Ministers a power to amend Welsh legislation which contains a description of a date or time, by inserting a reference to the actual date or time once it is known. The power is available where a date or time is described by reference to the coming into force of an enactment or the occurrence of any other event. For example, if an Assembly Act refers to things done on or after "the day on which section 10 comes into force", and section 10 is brought into force on 1 January 2018, the Act could be amended to refer to things done on or after "1 January 2018".

195. The power in section 38(1) cannot be used to change the effect of the legislation in question, but only to change the way in which that effect is expressed. The purpose of the power is to make legislation simpler and more accessible. Regulations under section 38(1) will mean that people reading the up-to-date text of the legislation will be able to understand references to dates or times without needing to refer to other legislation or documents (such as commencement orders).

196. Where a date is inserted, readers may find it helpful to know the significance of that date. Section 38(2) therefore enables regulations under section 38(1) to add an explanation of the date they insert. For example, it might sometimes be helpful to replace "the day on which section 10 comes into force" with "1 January 2018 (the day on which section 10 came into force)".

197. Subsection (2) also confers a power to make consequential amendments, repeals and revocations. For example, if Welsh legislation contained references to an "appointed day," which were replaced with references to the actual day that was appointed, an amendment might be made to remove the definition of the "appointed day".

198. Subsection (3) identifies the Welsh legislation that may be amended under this section, to include primary and secondary legislation made by the National Assembly for Wales and the Welsh Ministers, and other enactments so far as they are amended by those types of legislation. The power may be used to amend both existing legislation and legislation enacted after this section comes into force.

Section 39 – Power to make subordinate legislation in different forms

199. Since 2014, Assembly Acts and Acts of the UK Parliament have usually given the Welsh Ministers powers to make subordinate legislation in the form of regulations rather than orders or rules. However, the Welsh Ministers still have many powers to make orders and rules under earlier legislation. This section enables the Welsh Ministers to exercise powers to make regulations, rules or orders by making any other of those forms of subordinate legislation. For example, a power to make orders could instead be exercised to make regulations.

200. Section 39 is intended to remedy the situation where it is necessary to make a number of different regulations, rules or orders to give effect to a single policy. It applies to subordinate legislation that is made by statutory instrument, and its purpose is to enable different forms of subordinate legislation to be combined in the same instrument. Making a single statutory instrument may not only be administratively convenient but may also enable the legislation to tell its story more coherently.

201. Subsection (2) makes clear that making subordinate legislation in a different form under this section does not affect the procedure for making an instrument. For example, if an order-making power in an Act is used to make regulations in reliance on this section, the procedure that would apply to orders under the Act still applies.

202. Where other legislation, legal instruments or documents contain references to regulations, rules or orders made under particular powers, subsection (3) adapts those references to take account of the possibility that subordinate legislation under those powers may be made in a different form as a result of this section.

203. Section 39 applies regardless of the source of the Welsh Ministers' power or duty to make subordinate legislation, and regardless of when the power was conferred or the duty was imposed. However, subsection (4) provides that the power in this section cannot be used where the Welsh Ministers make subordinate legislation that applies otherwise than in relation to Wales under an Act of the UK Parliament or retained direct EU legislation. In other words, the power can be used where the Welsh Ministers make subordinate legislation under an Assembly Act or Measure, and where they make provision that applies only in relation to Wales under an Act of the UK Parliament or retained direct EU legislation.

Section 40 – Combining subordinate legislation subject to different Assembly procedures

204. Section 40 makes provision about the combination in a single statutory instrument of subordinate legislation made by the Welsh Ministers using different powers to which different Assembly procedures apply. It ensures that the instrument is subject to the most stringent of the procedures that would otherwise apply. For example, if a statutory instrument contains some provisions that would attract the affirmative procedure and some provisions that would attract the negative procedure, this section means that the affirmative procedure applies to the whole instrument (and that the negative procedure does not apply).

205. Many Acts already contemplate the combination in a single instrument of subordinate legislation made under different powers within the same Act, even where those powers would normally attract different procedures. For example, an Act may provide that any instrument containing regulations under certain powers in the Act is subject to the affirmative procedure (whether or not it also contains regulations under other powers), and that the negative procedure applies to "any other" instrument containing regulations under the Act (i.e. any instrument that does not contain regulations under the powers that attract affirmative procedure).

206. However, provisions about Assembly procedure for statutory instruments do not always deal with this issue, and they do not usually cater for the combination in the same instrument of provisions subject to different procedures that are made under different Acts. The purpose of section 40 is to facilitate the combination in a single statutory instrument of provisions that are subject to different procedures, whether they are made under powers in the same Act or different Acts, and to avoid any procedural difficulties that would be caused by combining provisions in this way.

207. Subsection (1) achieves this by providing that, where more than one Assembly procedure would apply, it is only whichever of those procedures is mentioned first in subsection (2) that applies. Subsection (2) then lists the different types of Assembly procedure from the most stringent to the least stringent, starting with the draft affirmative procedure in paragraph (a) and ending with no procedure in paragraph (e).

208. Subsection (3) makes clear that making subordinate legislation in a combined statutory instrument to which this section applies does not prevent the Welsh Ministers making subordinate legislation in separate instruments in the future, or affect the procedure that applies to any separate instruments they make. For example, if regulations under a power that would normally attract the negative procedure have been included in a statutory instrument that is subject to the affirmative procedure, the Welsh Ministers may make further regulations under that power in a separate statutory instrument that is subject to the negative procedure.

PART 4: GENERAL

Section 41 and Schedule 2 – Consequential amendments and repeals

209. This section and Schedule 2 provide for the amendment of the 1978 Act, the Government of Wales Act 2006 and the Waste (Wales) Measure 2010.

210. Paragraph 1 of the Schedule makes amendments to the 1978 Act which are consequential on Part 2 of the Act. The new section 23B of the 1978 Act ensures that the 1978 Act no longer applies to Assembly Acts and Welsh subordinate instruments to which Part 2 applies, but that the 1978 Act continues to apply to other Assembly Acts, Assembly Measures and Welsh subordinate instruments.

211. Section 23B(4) makes clear that sections 12 to 14A of the 1978 Act continue to apply to existing powers and duties (and powers and duties under future Acts of the UK Parliament) that are exercised to make Welsh subordinate instruments after Part 2 of this Act comes into force. However, section 11 of the 1978 Act, which provides that words have the same meaning in subordinate legislation as they have in the parent Act, will not apply to instruments that are subject to Part 2.

212. The 1978 Act will continue to apply to Acts, Measures and instruments enacted before Part 2 of this Act comes into force. Under section 23B(3)(b) and (c), the 1978 Act will also continue to apply to two categories of instrument made by the Welsh Ministers or devolved Welsh authorities under Acts of the UK Parliament or retained direct EU legislation after Part 2 comes into force. It will apply to those instruments if they are made with any person who is not a devolved Welsh authority (e.g. joint or composite instruments containing subordinate legislation made by the Welsh Ministers and a Secretary of State) or if they contain any provisions that apply otherwise than in relation to Wales.

213. New section 23C makes provision about how references in the 1978 Act to enactments and other types of legislation will operate in relation to Welsh legislation, including Assembly Acts and Welsh subordinate instruments to which Part 2 of the Act applies. These provisions are intended to ensure that the 1978 Act continues to operate correctly in relation to interactions between legislation to which that Act applies and legislation to which Part 2 of this Act applies.

214. Paragraph 2 of Schedule 2 makes several amendments to the Government of Wales Act 2006.

215. The first amendment is consequential on section 5 of the Act, which provides for the equal status of the texts of bilingual Welsh legislation. Section 5 restates section 156(1) of the 2006 Act in relation to legislation to which Part 2 of this Act applies. Paragraph 2(2)(a) of Schedule 2 therefore amends section 156 of the 2006 Act so that subsection (1) does not apply to legislation to which Part 2 applies. Section 156(1) will continue to apply to other bilingual Welsh legislation (principally legislation enacted before Part 2 comes fully into force).

216. Paragraph 2(2)(b) of Schedule 2 repeals section 156(2) to (5) of the 2006 Act. Those provisions enable the Welsh Ministers to make orders providing that, when particular Welsh words and phrases are used in Welsh legislation, they are to have the same meaning as the English words and phrases specified in the order. This power has never been used, and there are no plans to use it. It could also be said that these provisions are inconsistent with the general proposition that precedes them – namely that both languages have equal status. Schedule 1 to this Act now makes general provision about the meaning of various Welsh words and phrases in Welsh legislation, which can be amended if additional words and phrases need to be defined; and an individual Assembly Act or Welsh subordinate instrument can make its own provision about the meaning of words and phrases in the particular Act or instrument.

217. Paragraph 2(3) of Schedule 2 repeals a reference to section 156(2) to (5) of the 2006 Act which is spent as a result of the repeal of section 156(2) to (5).

218. Paragraph 2(4) of Schedule 2 repeals the provision of the 2006 Act which originally inserted section 23B into the 1978 Act, because paragraph 1 of Schedule 2 is replacing all of section 23B.

219. Paragraph 3 of Schedule 2 amends the Waste (Wales) Measure 2010 to remove provisions which have the same effect as section 37 of the Act in relation to subordinate legislation under the Measure, and which will no longer be necessary once that section comes into force.

Section 43 – Coming into force of this Act

220. This section makes provision about when and how the Act comes into force.

221. Part 1 of the Act comes into force the day after the Act receives Royal Assent. However, section 2 does not have any immediate effect in practice, because it requires a programme to be prepared only for each Assembly term that begins after the section comes into force, and requires the programme to be laid before the Assembly within 6 months after the appointment of a First Minister following an Assembly general election.

222. Part 2 comes into force the day after Royal Assent so far as it applies to the interpretation and operation of the Act itself. The power in section 5(2) and (3) to amend Schedule 1 also comes into force the day after Royal Assent, in case the Schedule needs to be amended before it comes fully into force.

223. An order made by the Welsh Ministers will bring Part 2 into force in relation to other Assembly Acts and in relation to Welsh subordinate instruments. It is expected that the order will bring Part 2 fully into force at the start of a calendar year, so that it is possible to tell from the year included in the title of an Act or instrument whether Part 2 applies to it.

224. Parts 3 and 4 come into force the day after the Act receives Royal Assent.

RECORD OF PROCEEDINGS IN NATIONAL ASSEMBLY FOR WALES

225. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: **http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=23311**

Stage	**Date**
Introduced	3 December 2018
Stage 1 – Debate	2 April 2019
Stage 2 Scrutiny Committee – consideration of amendments	13 May 2019
Stage 3 Plenary – consideration of amendments	25 June 2019
Stage 4 Approved by the Assembly	16 July 2019
Royal Assent	10 September 2019