

## BIALL ANNUAL CONFERENCE 2022: A SELECTION OF PAPERS

# Legal Consequentials: an Information Seeking Task

**Abstract:** This article is a summary of a parallel session delivered by Stephen Gregory at the BIALL Conference 2022. We may frequently work with amended legislation but have we ever stopped to think about the processes involved in identifying and implementing amendments? Drawing on experiences of working with government lawyers this article explores how government legal information professionals can assist in identifying candidates for consequential amendment. The complexities of searching for references to specific legislation provisions are described, providing some suggested search solutions. A risk-based approach is suggested. He concludes that by working collaboratively government information professionals may add significant value and benefit.

**Keywords:** legislation; consequential amendments; legal information; government information; Wales

## INTRODUCTION

Many of us frequently work with amended legislation, but have we ever stopped to think about the processes involved in identifying and implementing amendments? In recent years, the Library Team at Welsh Government (WG) have collaborated with lawyers to help identify consequential amendments (CA) arising from new Welsh legislation. We have also supported lawyers to undertake this work more effectively for themselves through training and support.

What are CA, and what are the underlying processes that enable their identification? How is legislation cited within legislation? What tools are available to assist with this work, and how can you ensure that you are searching effectively? What are the pitfalls and challenges? Is a risk-based approach necessary? This article provides practical tips on searching for CA and considers potential limitations, as well as outlining the environment in which this work has been undertaken. Crucially I place this consequential research, the identification of potential candidates for CA, in the context of information seeking and processing roles. This means information professionals are ideally and uniquely placed to support and add-value in this work.

This is a summary of a parallel session provided at the BIALL Conference 2022. I am grateful for the interest and comments provided by participants at this session. I am also indebted to WG colleagues (both information and legal professionals) who have supported my own learning and development for CA research work. Also, my grateful thanks to colleagues at Lexis Library, vLex Justis and Westlaw UK who have kindly reviewed this article and supported my professional development across many years of practice.

This article unashamedly focusses on legislation in Wales. The principles expounded here are directly transferable to other UK administrations and may be of relevance in other contexts.

## WELSH GOVERNMENT CONTEXT

*The Welsh Government is the devolved Government for Wales. We are working to help improve the lives of people in Wales and make our nation a better place in which to live and work.<sup>1</sup>*

WG is responsible for establishing, implementing, and revising policy for Wales, creating, and ensuring a workable set of primary and secondary legislation for Wales in both Welsh and English languages, and providing grants. We do this in devolved policy areas such as health, education, environment, local government, business and economy, culture and heritage. WG is formed by the Ministers and approximately 5,500 civil servants based in locations across Wales, London and internationally. WG Information, Library and Archive Services comprises 22 staff, including 12 librarians. Archive Services colleagues appraise and transfer WG's official records to public archives, additionally undertaking document disclosure research for inquiries and legal proceedings. Information support to WG legal professionals is provided by 3–4 librarians to ensure service continuity and resilience. Collectively this amounts to about 1 full-time equivalent legal librarian.

I should clearly distinguish WG from the Senedd Cymru / Welsh Parliament and the Wales Office of the

UK Government. The Senedd is the separate democratically elected body that represents the interests of Wales and its people, passing laws, agreeing Welsh taxes, and holding the WG to account.<sup>2</sup> The Wales Office (Office of the Secretary of State for Wales) promotes ‘...the best interests of Wales within a stronger United Kingdom. It ensures Welsh interests are represented at the heart of the UK government and the UK government’s responsibilities are represented in Wales.’<sup>3</sup> *Legal Information Management* has a strong tradition of documenting the Welsh devolution journey<sup>4</sup> to which the reader is referred for wider historical context.

## WELSH LEGISLATION

Senedd passes, on average, 5 Welsh Acts each year (Figure 1). These arise mainly from Government originated or supported Bills, and so WG lawyers, working extensively with each Bill Team, will have provided the legal drafting and advice.

In comparison to other administrations, this is not a large primary legislation output. However, Welsh Acts can have far reaching consequences, radically changing the law for Wales, as well as potentially having consequential impacts on UK, Scottish, Northern Irish and Retained EU legislation. Welsh legislation can be ground-breaking and internationally admired. ‘*The Well-being of Future Generations Act requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change. The Act is unique to Wales attracting interest from countries across the world as it offers a huge opportunity to make a long-lasting, positive change to current and future generations.*’<sup>5</sup> Nikhil Seth (Director of the Division for Sustainable Development, United Nations) noted ‘*What Wales is doing today the world*

*will do tomorrow. ... Action, more than words, is the hope for our current and future generations.*’<sup>6</sup>

Additionally, WG provides, on average, 287 pieces of secondary legislation each year (Figure 2). Newly introduced Statutory Instruments (SIs) will also impact on existing legislation, requiring determination of CA. You may also notice a rhythm in both charts. Legislative output tends to be lower at the start and peaks towards the end of a government’s period of office. This naturally has implications for our workflow and workload.

## CONSEQUENTIAL AMENDMENTS

The introduction of new Welsh legislation may have impacts on existing primary and secondary legislation. New legislation, replacing an existing legislative regime, will require the repeal of existing legislation. In the context of shared England and Wales legislation this may require a change in application for that law, making it only apply in England or in Wales. Additionally, new legislation may alter extant legislation, requiring text to be amended through deletion, substitution or insertion of words, phrases, sentences, sub-provisions or provisions. Occasionally changes to the structure of existing legislation may also be required, amending headings, or inserting new part or chapter headings.

*Craies On Legislation*, is remarkably concise about CA, covering this topic in just a couple of pages<sup>7</sup>. *Bennion, Bailey and Norbury on Statutory Interpretation* references ‘consequential amendment(s)’ in 9 sections including Code s.8.5 – Consequential Amendment where this topic is primarily discussed<sup>8</sup>. CA are frequently set out in a Schedule of an Act as the following example from the *Renting Homes (Amendment) (Wales) Act 2021* illustrates (Figure 3). Section 18 of the Act introduces *Schedule 6 –*

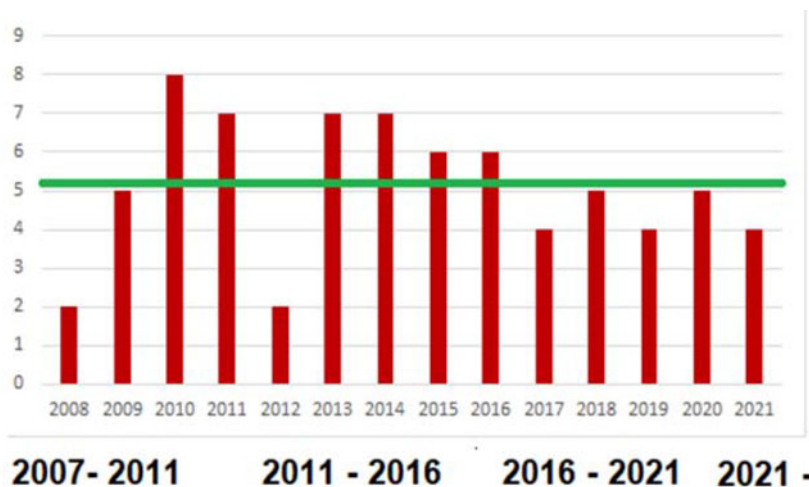


Figure 1: Welsh primary legislation. The number of Measures of the National Assembly for Wales (NAFW) (2008–2011), Acts of the NAFW (2012–2020) and Acts of Senedd Cymru (2020–) receiving Royal Assent each year. Assembly / Senedd periods appear below the timeline axis. The horizontal line, just above 5 pieces of primary legislation p.a., indicates the average (mean) number ‘Acts’ 2008–2021.

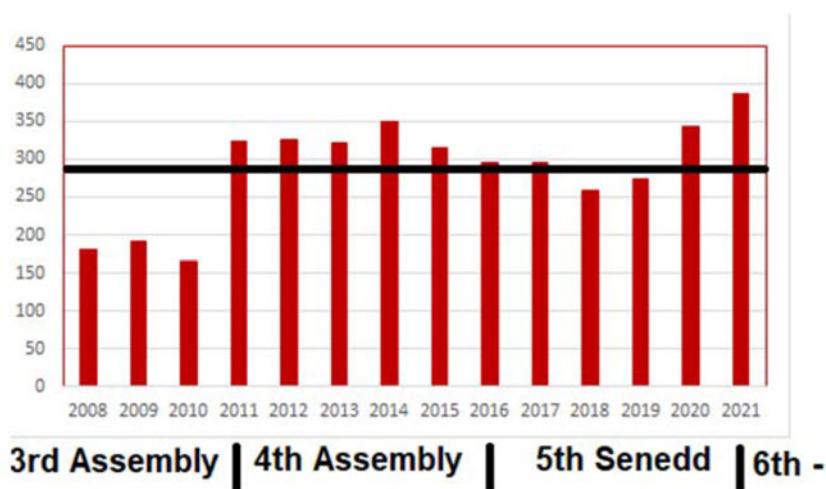


Figure 2: Welsh secondary legislation. The number of statutory instruments passed each year. Assembly / Senedd numbers appear below the timeline axis. The black line indicates the average (mean) number of SIs per year.

Minor and Consequential Amendments, which provides 28 paragraphs of amendments.

In Craies’s view<sup>9</sup>, inclusion of detailed CA within the Act is the preferred model. In my example CA had been identified and included at the Bill stage as introduced,<sup>10</sup> providing transparency for users about changes that will be effected by the new legislation. However, increasingly common, especially with large pieces of legislation, CA may be specified within both a Schedule and within regulations enabled under powers provided for in the new legislation, or even just within regulations.<sup>11,12</sup> The Regulation and Inspection of Social Care (Wales) Act 2016 exemplifies this hybrid approach. Section 185 introduces minor and CA in Sch. 3, while s.186 provides powers to make

CA by regulations (Figure 4). SI 2019/772 provided under powers of s.186 has 32 regulations detailing 46 CA.

In this example the 2016 Act received Royal Assent on 18 January 2016, but CA provided in SI 2019/772 were not made until 29 March 2019. For the wide variety of users of legislation this 3-year delay in being able to access CA could be problematic. However, there may be clear practical reasons for such a delay. Provisions of the 2016 Act were brought into force between 11 July 2016 and 29 April 2019, and a minority of provisions have yet to be commenced (as at September 2022). Where an extended timeline operates for commencement of new legislation, then it may be prudent to delay analysis, drafting and publication of CA until nearer commencement. Legislation is

*Renting Homes (Amendment) (Wales) Act 2021* 12

General

**17 Interpretation**  
In this Act—

(a) “standard contract” means—

(i) a periodic standard contract under the 2016 Act;

(ii) a fixed term standard contract under that Act,

as to which, see section 8 of the 2016 Act;

(b) “the 2016 Act” means the Renting Homes (Wales) Act 2016 (anaw 1).

**18 Minor and consequential amendments**  
Schedule 6 provides for amendments to the 2016 Act and to the Renting Homes (Fees etc.) (Wales) Act 2019 (anaw 2) which are minor or consequential.

**19 Coming into force**

(1) This section, section 15 and sections 17 and 20 come into force on the day after the day on which this Act receives Royal Assent.

(2) Paragraph 28 of Schedule 6 comes into force on a day appointed by the Welsh Ministers in an order made by statutory instrument.

*Renting Homes (Amendment) (Wales) Act 2021* 28

SCHEDULE 6  
(introduced by section 18)

MINOR AND CONSEQUENTIAL AMENDMENTS

*The 2016 Act*

1 The 2016 Act is amended as follows.

2 In section 20 (incorporation and modification of fundamental provisions), in subsection (3)—

(a) omit paragraphs (k) to (o), and the “and” which follows paragraph (o);

(b) after paragraph (p), insert “, and

(q) Part 1 of Schedule 9A (restrictions on giving notice under sections 173 and 186 and under a landlord’s break clause).”

3 In section 22 (powers in relation to fundamental provisions), omit subsection (3).

4 In section 34 (failure to provide written statement), after subsection (5) insert—

“(6) Paragraphs 1 and 2 of Schedule 9A make provision relating to periodic standard contracts, and fixed term standard contracts which incorporate section 186 or which have a landlord’s break clause, preventing a landlord from giving a notice (under section 173 or 186 or under a landlord’s break clause) requiring a contract-holder to give up possession if the landlord has not provided a written statement of the contract under section 31(1) or (2).”

Figure 3: CA provided by Schedule. Extracts from the Renting Homes (Amendment) (Wales) Act 2021. (© Crown, 2021 reused under Open Government Licence v.3.0 <https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>).

| PART 11<br>FINAL PROVISIONS |   | OFFERYNNAU STATUDOL<br>CYMRU   | WELSH STATUTORY<br>INSTRUMENTS  |
|-----------------------------|---|--|---|
| 185                         | <b>Minor and consequential amendments</b><br>Schedule 3 makes minor and consequential amendments.   |  |   |
| 186                         | <b>Power to make consequential etc. provision</b><br>(1) The Welsh Ministers may by regulations make such consequential, incidental, transitional, transitory or saving provision as they think appropriate for the purposes of or in connection with this Act. | <p><b>2019 Rhif 772 (Cy. 146)</b></p> <p><b>GOFAL CYMDEITHASOL, CYMRU A LLOEGR</b></p> <p>Rheoliadau Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 (Diwygiadau Canlyniadol) 2019</p> <p><i>Gwriad</i> 29 Mawrth 2019<br/><i>Tu ddi i rym</i> 29 Ebrill 2019</p> <p>Mae Gweinidogion Cymru, drwy arfer y pŵer a roddir gan adran 116 o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016(1), yn gaseud y Rheoliadau a ganlyn:</p> <p>Gosodwyd drafft o'r Rheoliadau hyn garben Cynlliad Cynllithol Cymru o dan adran 116(4) o Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 ac fe'i cymeradwywyd ganddo drwy benderfyniad.</p> <p><b>Ewsi a chythwyn</b></p> <p><b>L—(1)</b> Faw'r Rheoliadau hyn yw Rheoliadau Deddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 (Diwygiadau Canlyniadol) 2019.</p> <p>(2) Daw'r Rheoliadau hyn i rym ar 29 Ebrill 2019.</p> | <p><b>2019 No. 772 (W. 146)</b></p> <p><b>SOCIAL CARE, ENGLAND AND WALES</b></p> <p>The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2019</p> <p><i>Made</i> 29 March 2019<br/><i>Coming into force</i> 29 April 2019</p> <p>The Welsh Ministers, in exercise of the power conferred by section 116 of the Regulation and Inspection of Social Care (Wales) Act 2016(1), make the following Regulations:</p> <p>A draft of these Regulations was laid before the National Assembly for Wales under section 116(4) of the Regulation and Inspection of Social Care (Wales) Act 2016 and has been approved by a resolution of the National Assembly for Wales.</p> <p><b>Title and commencement</b></p> <p><b>L—(1)</b> The title of these Regulations is the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2019.</p> <p>(2) These Regulations come into force on 29 April 2019.</p> |

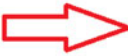


Figure 4: Regulation and Inspection of Social Care (Wales) Act 2016 exemplifies the hybrid model of CA. (© Crown, 2019 reused under Open Government Licence v.3.0 <https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>).

constantly changing, and therefore, this delay will provide a timelier and more accurate picture of extant legislation, and by inference a truer, more accurate set of CA. We also need to acknowledge that governments' resources for legislative drafting are finite, whilst drafters' workload demands are significant. Delays in providing CA can be a natural consequence of these workload pressures.

### IDENTIFICATION OF CONSEQUENTIAL AMENDMENTS

Government legal librarians and legal professionals use features of, and undertake searches of, contemporary consolidated legislation databases to identify potential CA. A variety of search techniques will be required and here I provide some examples of strategies and considerations that have proved effective in our work in WG. This list should not be considered as comprehensive, but I hope that it provides a solid starting point if you are required to help identify CA.

### Legislation Citing Tools

There are two tools of potential value in this context: Westlaw UK's **Legislation Citing** and vLex Justis's **Cited In**. Westlaw Legislation editors, through the Legislation Citing tool, identify and list references to legislation that are found within existing, new, and amending legislation at whole act / SI and provision level (sections, schedule paragraphs, regulations, etc). Citing legislation is described as applying, disapplying and referring, and listed under each of these headings at provision and sub-provision level (Figure 5). Navigate to your desired provision within

Westlaw UK Legislation (eg. Education Act 2002, s.101), and through the left-hand navigation pane select **Provision Details > Primary References**. Legislation Citing will list where s.101 is cited in other legislation. Remember to also check for Whole Document citations, available through the top-level *Arrangement of Act* screen for primary and secondary legislation within Westlaw.

If you have access to Westlaw UK, Legislation Citing is a great starting point! The Westlaw editors have done significant work for you, but there are some limitations. New citations are added to Legislation Citing but historical citations (removed, superseded, or repealed / revoked citations), remain in these listings without immediate clues to their historical status. Additionally, there are unfortunately no combined legislation citing lists at Part or Chapter level, a feature which would be extremely helpful to the CA researcher.

vLex Justis also provides a **Cited In** option in their legislation service for both primary and secondary legislation. This currently lists citing legislation in a single list per enactment, without specifically identifying the citing provisions. However, an **Amendments** tab offers useful information, such as changes made by and to an act by other legislation. **Cited In** also includes relevant citing case law, with the **Cited Authorities** tab enabling users to differentiate between case law and citing legislation by providing the option to filter results by material type, e.g. books, cases and jurisdictions.

### Searching - direct and clear citations

A conscientious legal librarian will always want to verify their research, wherever possible, using a variety of sources and



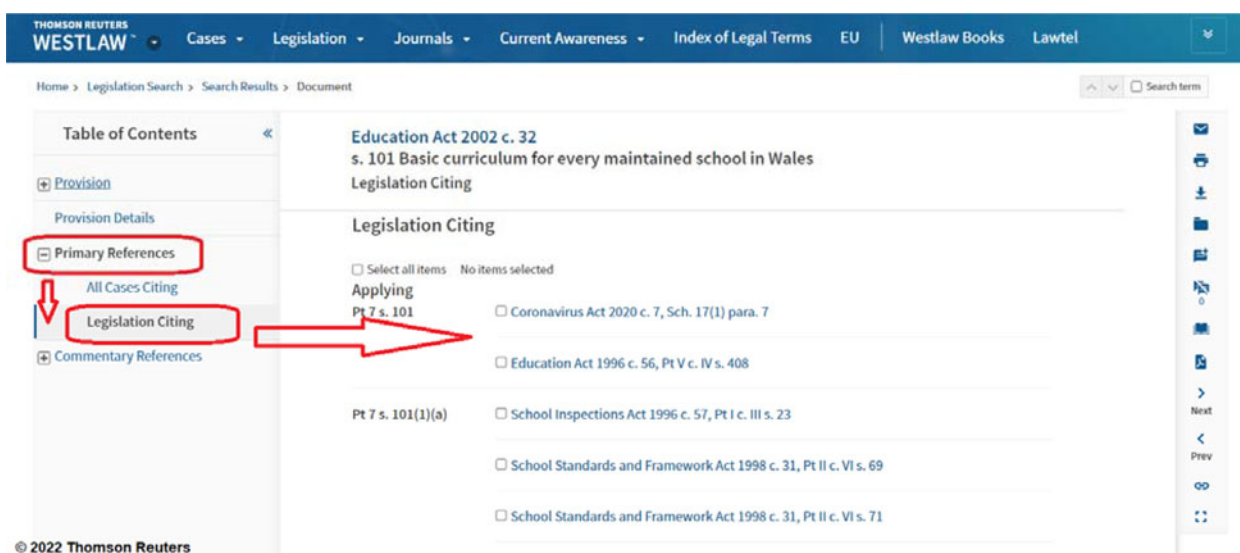


Figure 5: Westlaw UK Legislation Citing for Education Act 2002, s.101. (©Thomson Reuters, 2022. Provided here with kind permission of Thomson Reuters).

search techniques. So even if you have subscription access to Westlaw Legislation Citing you are likely to still want to do your own searching and checking. This is most straightforward where there are clear and direct references to the legislation that you need to find CA for. Returning to my example of **Education Act 2002, s.101 – Basic curriculum for every maintained school**. A range of searches within the text of legislation could be tried as given in Table 1 below.

Both Lexis and Westlaw provide results at provision level (paragraph level for Schedules in Westlaw) which is extremely helpful. However, you may find that using the ‘AND’ operator is too imprecise and returns irrelevant hits. This is especially true in longer provisions. It may also occur where spurious hits are found not in the legislative text, but in the amending notes for both services, or for more recent primary legislation in Westlaw ‘Statutory Annotations’ entries. Substituting AND with search operators for ‘within the same paragraph’, ‘within the same sentence’, or using adjacency operators could help make your search results more specific and relevant (Table 1). Note that there may be risk in making your searches more specific, or more general.

Both offer potential to miss relevant results. Specific searches may exclude relevant and appropriate search results. More general searches, present the danger of failing to recognise relevant hits as you trawl through multiple search results.

As consolidation in [www.legislation.gov.uk](http://www.legislation.gov.uk) becomes more widespread and timelier, the Advanced Search ‘keywords in context’ field may also be considered for searching, especially where subscriptions to the commercial subscription platforms are not available. However, the search functionality in this platform is more limited which may be to the disadvantage of the searcher. Additionally subordinate legislation prior to 2018 is usually not consolidated on this platform,<sup>13</sup> meaning that you could be searching out of date information.

### Searching - Legislative citations that are less clear

Interpretive provisions within legislation provide drafters with an ability to economise on text whilst retaining precise meaning. Drafting shorthand is an excellent aid

Table 1: Sample searches in Lexis Library and Westlaw UK for clear, direct legislative citations.

| Lexis Library  | Westlaw UK  |
|--|---|
| 101 AND basic curriculum AND education act 2002  | 101 AND ‘basic curriculum’ AND ‘education act 2002’   |
| 101 AND basic curriculum (education act 2002 OR 2002 c.32) AND (101 OR basic curriculum) | 101 AND ‘basic curriculum’ (‘education act 2002’ OR ‘2002 c32’) AND (101 OR ‘basic curriculum’) |
| <b>Alternative search operators:</b>   | <b>Alternative search operators:</b>  |
| Within the same paragraph: w/p   | /p  |
| Within the same sentence: w/s  | /s  |
| Search terms are found within (n = number) of words: w/n                                 | /n  |

Table 2: Search strategies to accommodate abbreviation of the full Act title, as applied by interpretive provisions. Similar strategies could also be used for interpretive abbreviations in SIs.

| Lexis Library   | Westlaw UK   |
|---|--|
| (2002 act OR act of 2002 OR the act) AND 101 AND basic curriculum   | (‘2002 act’ OR ‘act of 2002’ OR ‘the act’) AND 101 AND ‘basic curriculum’  |
| (2002 act OR act of 2002 OR the act) AND 101 <u>with</u> click ‘Add Topics’ and select ‘Education’  | (‘2002 act’ OR ‘act of 2002’ OR ‘the act’) AND 101 <u>with</u> Subject/Keyword = education OR curriculum<br>(‘2002 act’ OR ‘act of 2002’ OR ‘the act’) AND 101 Filter results by Topic = Social regulation > Education |
| More cumbersome, but effective in some contexts, especially where there are multiple references to your specific citation. Search to identify legislation including relevant interpretive provision hits. Download full versions of each piece of legislation (or, in Lexis Library, open the Whole Act on screen – only used for shorter pieces of legislation) and use PDF, Word or web browser ‘Find’ tools to search for your specific citations: |  |
| (2002 act OR act of 2002 OR the act) AND (mean! OR defin! OR interpret!) AND education act 2002)  | (‘2002 act’ OR ‘act of 2002’ OR ‘the act’) AND (mean! OR defin! OR interpret!) AND ‘education act 2002’  |

for legislative succinctness but adds complexity when undertaking consequential searches. Frequent examples include: “the 2002 Act’ means the Education Act 2002 (c.32)’<sup>14</sup> or “the Act of 1973’ means the Fair Trading Act 1973 and ‘the Act of 2002’ means the Enterprise Act 2002’<sup>15</sup>. There may also be interpretive abbreviations to simply ‘the Act’ – “the Act’ means the Childcare Act 2006’<sup>16</sup>. Remember that legislative free text searching within Lexis Library and Westlaw UK occurs at provision level, and not across the whole Act / SI. Use of interpretive provisions therefore separate relevant search terms into different database records, preventing the full coordination of all relevant search terms. Table 2 suggests some search strategies to overcome this. Lexis Library or Westlaw ‘home page’ whole site searches might also occasionally overcome some of these search challenges.

Remember as well as searching for specific sections or schedules, you may need to also search for Parts and/ or Chapters. Here the structure of the legislation should provide and ensure relevance to your query. In my example of the Education Act 2002 s.101 prompts to search for references to **Part 7 - The Curriculum in Wales**. This may mean searching for (‘Part 7’ OR ‘Part VII’) to retrieve all relevant results. Chapter searches could also apply and follow similar search conventions.

For convenience legislative drafters may also include provision ranges within legislation. For example, ‘(d) provide for polls to be conducted under the voting systems authorised by **sections 5 to 9** of the Local Government and Elections (Wales) Act 2021, which are a simple majority system and a single transferable vote system.’<sup>17</sup> Cited provision ranges may not always directly correspond to Chapter or Parts in their entirety. The consequential searcher should be aware of this possibility. Carefully crafted search strategies should retrieve relevant results for s.5 and s.9 for the example

provision range above, but the implied references to sections 6, 7, and 8 remain hidden to our usual armoury of search techniques. This is where Westlaw UK Legislation Citing comes to our rescue. Westlaw Legislation editors recognise this provision range and accordingly record appropriate Legislation Citing entries against sections 5, 6, 7, 8 and 9 of Local Government and Elections (Wales) Act 2021.

Legislation may similarly include references to several provisions in sequence. Eg. ‘**Sections 65, 66 and 68** apply for the purposes of an application to renew a special procedure licence as if that application were an application for the issue of a licence.’<sup>18</sup> If you craft your phrase search as: ‘section 66’ AND ‘special procedure license’ then you may not retrieve this relevant result. Better to search using adjacency or within the same sentence / paragraph search operators, searching accordingly for both 66 and ‘special procedure license’. Lexis and Westlaw provide some automatic pluralisation of search terms, so searching ‘section’ should also provide results for ‘sections’, a helpful automated function in this context. But equally understand whether your database reliably searches ‘section 66’ to also retrieve results containing ‘s.66’ and vice versa. In Lexis Library Legislation advanced searches I have been advised that searches should include all variations e.g. s.66 OR section 66 OR s66 OR 66.

Consequential searches are frequently supplemented by searching for significant phrases or terms found within legislation. ‘National curriculum for Wales’ is consistently and precisely used in legislation. But the searcher may not always be so fortunate. Where the phrase is used frequently but is not sufficiently unique for your search context, then additional search terms may also be required. Whilst drafters aim to be as consistent with language use as possible<sup>19</sup>, occasional variations may appear in legislation. You may also need to consider and search for variations, eg. ‘sale of goods’ or ‘goods sold’.

## Searching - subordinate legislation created under powers of

When new legislation impacts on primary legislation which confers powers to make subordinate legislation, the consequential searcher may need to identify all SIs created under those powers, especially those that are extant. Where SI-making powers are being repealed then, for clarity of the statute book, it may be helpful to also revoke, with savings where appropriate, any in-force SIs. Lists of such SIs made under the impacted powers may therefore be necessary. Amendment of SI making powers may also require similar searches but potentially with some further filtering. The commercial databases provide easy access to lists of SIs created under specific legislative provisions, a significant aid to the consequential searcher. But note that in Lexis these lists are populated only with in-force SIs, while Westlaw UK identifies both in-force and revoked SIs. These lists may be subject to very occasional error and the searcher may also wish to conduct their own searches. Looking for SIs created under powers provided by, for example, s.210 of Education Act 2002 may be crafted in the form of:

(power\* OR authority) [within the same sentence as] 'education act 2002' [within the same sentence as] 210

Will the searcher also need to consider the non-statutory subordinate legislation, ('non-SIs'), created under similar powers? Commercial UK legislation databases, and legislation.gov.uk, do not currently capture non-SIs, so alternative search sources will be required where Non-SIs need to be identified. Non-SIs are poorly indexed and controlled, making them difficult to locate. Therefore, this may be an area of risk within your search results.

## FURTHER CONSIDERATIONS

### Know your database

Major legal databases, such as Westlaw UK, Lexis Library and legislation.gov.uk, structure legislation so that each provision forms its own record or results page. In Westlaw UK this also extends to each paragraph of a Schedule appearing as an individual results page. Usually, this database architecture provides for precise database searching, specific results reporting, convenient navigation around search results and when browsing legislation. However, this detailed structuring prevents coordination of search terms that appear in different provisions. This has previously been exemplified through the abbreviation of the Act title to 'the act', 'the 2002 act' or to 'the act of 2002' within interpretive provisions. Interpretive provisions separate the full context of the abbreviation, requiring the consequential searcher to undertake extensive and sometimes time-consuming 'sense checks' when evaluating results. Lexis Library's on-screen Halsbury's Annotations can help in this context, as do the hypertext links provided in Westlaw UK's consolidated legislation text.

Understanding your search source naturally also extends to being familiar with its content and coverage. Within the UK context this is most clearly exemplified

by Northern Ireland legislation. While this is available in legislation.gov.uk and Westlaw UK, Lexis Library users will need to remember to search in the separate commentary resource, *Valentine: All Laws of Northern Ireland*. It may also be important to check periods of legislation coverage within your source, and, where appropriate, cite this as a potential search risk / deficiency in your results. Similarly, inclusion and coverage of local or private legislation may also need to be considered.

In addition to understanding specific nuances of search within your chosen databases (eg. the previously mentioned automatic searching for simple plural variants of singular search terms), consequential searchers will also need to confidently understand the consolidation practices of their chosen legal databases. Providing parallel versions of text for each appropriate UK 'jurisdiction', enables reasonably confident searching for text that applies, in my context, to Wales. The situation can occasionally be more problematic where services only provide a single version of consolidated legislation text. Sometimes amendments specific to Wales may only be identified through mention in amending notes (eg. 'a corresponding amendment has been made in relation to Wales by ...'). Therefore, the full and precise textual amendments that apply in Wales are not included in the text as displayed and are therefore not directly searchable! Comprehensive consequential searching clearly requires substantiation using at least two different amended legislation sources. However, services which provide direct access to historical versions of legislation can also provide some frustrating hits for the consequential searcher. Search results include references to previous versions of a provision; where the in-force version no longer includes hits to all, or any, of your search terms. The inclusion of repealed, revoked and 'as original' legislative text within legislation databases can also provide additional spurious results, adding processing time to the searcher's workload. Conversely, databases which remove fully repealed legislation from their services, marking this absence with a 'tombstone' page, means that historical references will not be listed. Under the exceedingly rare possibility of recording legislation as repealed in error, this may mean that valid and valuable results are missed.

### Prepare and document

You will appreciate that consequential searching may form a sizeable project. There may be many pieces of impacted legislation to search for; each element may require several distinct search strategies, with each search conducted over two or more legislation databases. Careful consideration and planning of search strategies will be required, aiming for comprehensiveness and search efficiency. The need for adequate preparations, accurate and comprehensive record-keeping is hopefully apparent.

Your search records will serve several vital objectives such as: assisting planning; ensuring all searches are undertaken; enabling the searcher to temporarily stop and effectively resume searching; enabling a team of searchers to work collectively on the project; facilitating

and encouraging ongoing reflection on search effectiveness and comprehensiveness; and in monitoring overall progress. Detailed recording of the precise searches used, together with the number of results retrieved, will also provide a helpful audit trail. These records will provide documented reassurance (to you, your team colleagues, and your end-user / requester) that you have searched correctly and effectively. If doubts arise, your documented full search history will provide a sound evidence base on which to determine whether alternative and additional search strategies are required. Full search records will also provide auditable evidence when searchers make sound and pragmatic alterations to search strategy plans as searches yield too many, or too few results, or as search time becomes increasingly short. Where a search strategy using AND operators yield far too many results to effectively review, this should be documented, and more specific alternative strategies employed, such as 'within the same paragraph' or 'within the same sentence' searches. Your search audit trail will help account for this decision-making process and supports a risk-based approach to information retrieval that is inevitable under such circumstances.

How you document the actual results also deserves consideration. When processing many tens or hundreds of results will it be helpful, or essential, for your results to be manipulable? We work extensively within MS Word Tables, but we have also used spreadsheets. Both enable results to be sorted and re-sorted to suit differing requirements and checks. Think carefully about how you structure your results tables so that you can sort on all elements that will be helpful. It may take time to format search results to such a granular structure, but you will be rewarded for this time and effort. Fully manipulable results can save you time when cross-checking results provided by different databases, where sequencing of search results may be different. Being able to manipulate your results in diverse ways can also provide impactful decision-making support. Your end-user's focus may change from the required CA for this impacted legislative provision, to the opposing focus – how is this whole piece of legislation, Act or Statutory Instrument, going to be impacted by all the changes that are required? Having manipulable results provides this potential to support and answer a range of questions and needs.

How you document is a vital consideration, but what you document equally deserves consideration. There will be a strong and clear case for selecting results as relevant, as equally there will be for discounting the irrelevant false hits. Occasionally there is a middle ground of ambiguity. As information professionals we may not be qualified to judge whether a particular search result is a valid candidate for CA. Legal librarians are not best placed to be 'arbiters of relevance' but should err on the side of caution providing the information, but noting to our requester our uncertainties. Equally when checking results against two or more legislation databases it can be helpful to document the irrelevant results that you have excluded. This will save you time from having to re-investigate each search hit in detail and provides a further valuable audit trail of your decision-making.

Where legislation can extend or apply across the United Kingdom, or separately / collectively to England, Northern Ireland, Scotland, or Wales, this may also impact relevance. In our work in Wales, we can sometimes ignore results from Scotland or Northern Ireland, but we know to carefully investigate legislative application where legislation extends to both England and Wales. Similar considerations may impact your decision-making and record keeping processes.

## **BARRIERS TO COMPREHENSIVE RETRIEVAL?**

Where CA research is an especially large project it may be inevitable that the searcher / team adopts a risk-based approach. Barriers to comprehensive retrieval may be knowingly, or potentially unknowingly, encountered. A particular search may yield too many results, necessitating a more focussed search. For instance, by having to abandon a general search using the AND operator, to searches using narrower proximity search operators. In doing so you may be failing to retrieve appropriate and valid results for CA consideration. There may also be risks of data coverage within your chosen sources, determined through the overall time periods of coverage, or potentially through consolidation or inclusion practices. In the latter instance text searchable content from Tables or Forms included within legislation might not be reproduced in a legislation database, or may only be available as a scanned image PDF. Searching different legislation databases may overcome these difficulties. Have the team decided to purposefully exclude results from any of the other home nations? Should there also be searches of retained EU legislation sources? Are pressures of search time and capacity dictating very targeted searching? The reflective searcher will be considering these search risks, documenting and discussing them with their colleagues and end-user. Clearly where the risks of a certain omission, strategy or resource are too large, then additional or revised searches may be required.

## **GOING FURTHER**

Ensuring that the statute book accurately reflects current law through appropriate identification and selection of required CA, followed by the drafting and passing of legislation to bring them into effect, is the primary objective. But the CA task within a government department may not necessarily stop there. Should there be consideration of local / private legislation for CA? If so, have your searched sources included local / private legislation or do you need to undertake additional searches elsewhere? Should update of circulars, statutory guidance or other official publications follow? Where wholesale repeal of a legislative regime occurs, the audit trail cancelling the related circulars and statutory guidance documents should ideally be clear and obvious to all potential users. Means to communicate these guidance cancellations will be required.



## CONCLUDING THOUGHTS – ADDING VALUE

This article has described the context of our work in WG and outlined how CA are provided in legislation. Search challenges for legislative citations within legislation have been identified, offering some suggested search solutions. CA projects can be extensive and so effective work planning, documenting, and building in points for review can be beneficial. Providing results in manipulable formats (Word processor tables or spreadsheets) can also benefit the searcher and end-user. There may be barriers to comprehensive results retrieval, suggesting a risk-based approach to this type of work. CA research work may not be restricted to public and general legislation but might need

to also encompass local / private legislation, non-statutory subordinate legislation and official published guidance.

This article, hopefully clearly demonstrates that the first stages of determining potential candidates for CA (searching, results analysis and presentation) are definitively information-seeking tasks. Legal information professionals are ideally placed to support CA projects within these initial work stages. We have the professional knowledge, skills, and experience to search a range of sources effectively, comprehensively, and efficiently. Our information management skills enable us to filter, prioritise and present results in ways that meet our requesters' varying needs. We can also effectively train and support legal professionals to undertake CA research for themselves. Put simply, we add value by being part of CA research projects!

### Footnotes

- <sup>1</sup> Welsh Government, 'Official Blog for the Devolved Government for Wales' <<https://welshgovernment.blog.gov.wales/>> accessed 30 August 2022.
- <sup>2</sup> Welsh Parliament, Senedd Research, 'Ymchwil y Senedd / Senedd Research' [blog] <<https://research.senedd.wales/topics/>> accessed 30 August 2022.
- <sup>3</sup> Office of the Secretary of State for Wales, 'About us' <[www.gov.uk/government/organisations/office-of-the-secretary-of-state-for-wales/about](http://www.gov.uk/government/organisations/office-of-the-secretary-of-state-for-wales/about)> accessed 30 August 2022.
- <sup>4</sup> E.g. J Williams, 'Law making in a devolved Wales: work in progress' (2014) 14(4) *LIM* 266–276; L Stevenson, 'An emerging Welsh Legal Identity: a Brief Overview of the Information Landscape' (2013) 13(3) *LIM* 156–161; D Greenberg, 'Welsh Devolution' (2013) 13(3) *LIM* 134–138.
- <sup>5</sup> Future Generations Commissioner for Wales, 'Well-being of Future Generations (Wales) Act 2015' <[www.futuregenerations.wales/about-us/future-generations-act/](http://www.futuregenerations.wales/about-us/future-generations-act/)> accessed 31 August 2022.
- <sup>6</sup> Public Health Wales, 'Well-being of Future Generations (Wales) Act 2015: For a Happier, Healthier, Fairer and Sustainable Wales' (Health in Wales, News Archive, 28 September 2016) <[www.wales.nhs.uk/news/42762](http://www.wales.nhs.uk/news/42762)> accessed 31 August 2022.
- <sup>7</sup> D Greenberg (ed), *Craies on Legislation: a Practitioners' Guide to the Nature, Process, Effect and Interpretation* (12<sup>th</sup> edn, Sweet & Maxwell 2020) para 14.3.11 – Consequential Amendments.
- <sup>8</sup> D Bailey & L Norbury (eds), *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, LexisNexis Butterworth, 2020, Code s.8.5.
- <sup>9</sup> D Greenberg (n 6), para 14.3.11.
- <sup>10</sup> Senedd Cymru / Welsh Parliament, 'Renting Homes (Amendment) (Wales) Bill: as introduced' (Senedd Business, 10 February 2020) <<https://senedd.wales/media/gt3c20hm/pri-ld12310-e.pdf>> available via <<https://business.senedd.wales/mglssueHistoryHome.aspx?lId=27569>> accessed 31 August 2022.
- <sup>11</sup> D Greenberg (n 6), para 14.3.11.1.
- <sup>12</sup> D Bailey & L Norbury (n 8), Code s.8.5.
- <sup>13</sup> The National Archives, 'Understanding Legislation: Revised Legislation on legislation.gov.uk' <[/www.legislation.gov.uk/understanding-legislation#revisedlegislation](http://www.legislation.gov.uk/understanding-legislation#revisedlegislation)> accessed 31 August 2022.
- <sup>14</sup> Eg. See Education (Wales) Act 2014, s. 49 - General interpretation.
- <sup>15</sup> Eg. See Enterprise Act 2002 and Media Mergers (Consequential Amendments) Order 2003, SI 2003/3180, Art. 1 - Citation, commencement and interpretation.
- <sup>16</sup> Eg. See Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, SI 2018/794, Reg. 2.
- <sup>17</sup> Representation of the People Act 1983 c. 2, s. 36A - Rules for local elections in Wales.
- <sup>18</sup> Public Health (Wales) Act 2017 anaw. 2, s. 67.
- <sup>19</sup> H Xanthaki, *Thornton's Legislative Drafting* (6<sup>th</sup> edn Bloomsbury Professional 2022), 4.25, 19.2–19.3.

### Biography

**Stephen Gregory** has worked at Welsh Government for more than 15 years with much of that time as Legal Librarian. Previously Stephen worked in a commercial legal practice library, health care as well as in higher and further education libraries. Stephen is currently Honorary Secretary to the CILIP Government Information Group. He writes here in a personal capacity.