

Mick Antoniw MS
Counsel General and Minister for Constitution

06 February 2023

Dear Mick

Corrections to Welsh statutory instruments

Thank you for your letter of 18 January 2023, in which you respond to the questions set out in my letter to you on 21 December 2022.

We considered your responses to our questions at our meeting on 23 January 2023 and, overall, we believe they are helpful and informative, not least because such explanations are now in the public domain.

At our meeting on 30 January 2023, we also considered a letter dated 26 January 2023 from the Minister for Rural Affairs and North Wales, and Trefnydd and the Deputy Minister for Mental Health and Wellbeing in response to our letter of 16 January 2023 on two sets of regulations which, in part, prompted us to write to you on 21 December.

In respect of both letters, there are some matters on which we would be grateful to receive further clarity, as set out below.

Letter of 18 January 2023

1) In paragraph 4 you state "A correction slip is used when the SI has been registered and published, and was a process designed very much with the printed SI in mind. Correction slips are issued with every new sale of a printed SI that is purchased (and also sent to known purchasers of the SI); they are also published alongside the digital versions of the (corrected) SI on legislation.gov.uk." Do you consider that there remains a potential democratic deficit in the executive or the SI Registrar making unilateral changes to legislation approved by a legislature?

2) It remains unclear to us how the criteria set out in the National Archives' Statutory Instruments Practice (SIP) and the Special Report of the Joint Committee on Statutory Instruments on Transparency and Accountability in Subordinate Legislation are applied when considering errors in bilingual, as opposed to monolingual, legislation. The Welsh and English texts have equal status, and so different or additional principles of interpretation may be engaged when considering whether an error has a "substantive" effect. Please can you confirm whether the particular nature of bilingual legislation is taken into account when applying the criteria? Also, are you aware if the SI Registrar has Welsh-language expertise, or do they rely on a statement from the Welsh Government that an error relating to Welsh-language text is within the appropriate criteria?

3) In paragraph 6 you note that 'correction on making' and 'correction on publication' are terms of convenience used by the Welsh Government but are not entirely accurate descriptions of the point at which corrections are made. We would welcome a commitment that, in government responses to our reports on statutory instruments, accurate terms will be used consistently and correctly in the future, so that it is clear how any errors are to be corrected.

4) In paragraph 11 you state "In general terms, if the error is one which could be remedied by correction slip then we would prefer to deal with that as a correction on (i.e. prior to) making. If it is a very minor matter, but not one which would necessarily be suitable for a correction slip, then it still may be the case that we would seek to deal with this as a matter on (i.e. prior to) making. The Minister can bring these matters to the attention of Members either in correspondence with the Committee or during the debate on the instrument." We would welcome a commitment that any such matters will always be brought to the attention of the Senedd during the debate, regardless of whether the matter has already been discussed in correspondence with my Committee, because it is important that what is being voted on is made clear to all Senedd Members and to the public.

On a general point, we note paragraphs 11 to 13 and the approach you advocate, including that your "preferred approach" is to correct the draft instrument and re-lay it before the Senedd. For the avoidance of doubt, our view remains that the Senedd should not be put in a position in which it is expected to vote on a defective instrument.

Letter of 26 January 2023

5) In question 4 of our letter to the Minister and the Deputy Minister we asked for clarity on what steps have been (or will be) put in place to ensure that a request to approve knowingly defective regulations is not put before the Senedd in the future. We do not consider it a sufficient answer to simply make reference to the Welsh Government's usual drafting policy, particularly when that policy did not catch the defects in those two sets of Regulations. We would be grateful therefore if you could address the key point which is to provide clarity on what steps the Welsh Government *has (or will) put in place* to ensure that a request to approve knowingly defective regulations is not put before the Senedd in the future.

6) Again as regards the response we received to question 4, please can you provide a commitment that, as regards statutory instruments arising from the Retained EU Law (Revocation and Reform) Bill (should it receive Royal Assent) the Welsh Government will not knowingly place defective instruments before the Senedd for approval.

7) As regards the response to question 6 of our letter to the Minister and the Deputy Minister, we note that, contrary to the information originally provided by Welsh Government in response to our report and during the plenary debate, corrections to two errors in the Food Regulations were made as part of the registration process which eliminated the need for the production of a correction slip. We are concerned that such an approach appears neither transparent nor accessible. This concern applies equally to the process of correction before making. Please can you explain how a reader of legislation will know that changes to the regulations were made, however minor they are considered to be by the Welsh Government, following approval by the Senedd? As mentioned in my previous letter, we have also written to the SI Registrar to seek further information about their role in these processes. We are awaiting a response.

I would be grateful to receive a response by 23 February 2023.

I am copying this letter to the Minister for Rural Affairs and North Wales, and Trefnydd and the Deputy Minister for Mental Health and Wellbeing.

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies
Chair