



Ein cyf/Our ref: PO/18/2023

Huw Irranca-Davies, Chair
Legislation, Justice & Constitution Committee
Senedd Cymru
Cardiff Bay
Cardiff
CF99 1SN

18 January 2023

Dear Huw

CORRECTIONS TO WELSH SUBORDINATE LEGISLATION

Thank you for your letter of 21 December 2022. You have raised a number of matters relating to correction slips, which I should make clear apply to Statutory Instruments (SIs) only rather than all subordinate legislation made by the Welsh Ministers.

Before turning to your substantive questions, I believe it may help the Committee if I set out a few general points:

1. We are very clear that substantive errors in an SI, no matter how small, can only be corrected by amending legislation. But equally it is important, for the accessibility of our legislation, that where errors are not substantive, but ought to be corrected, that is done wherever possible.
2. When considering how to correct a mistake in a Welsh SI we are informed primarily by [Statutory Instruments Practice](#)¹ (SIP). Although SIP does not provide guidance on Welsh SIs, the procedures and principles outlined in Parts 3 and 4 are followed in practice by the Welsh Government in preparing, registering and publishing legislation.
3. SIP outlines a range of approaches to achieving corrections for non-substantive errors, depending on the error and the point is it at in the process of making, registering and publishing an SI.

¹ The National Archives (November 2017) *Statutory Instrument Practice, 5th edition*

Criteria for considering whether to seek a correction slip

4. 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
5. When considering whether a correction slip may be sought, our first consideration is paragraph 4.7.4 of SIP. We also consider the Special Report of the Joint Committee on Statutory Instruments, *Transparency and Accountability in Subordinate Legislation*, where the Committee is clear that errors in subordinate legislation should not be corrected by correction slip where they amount (or could possibly amount) to a change of substance. In addition, in the report the Committee shows the criteria in determining the suitability of the issue of a correction slip:
 - the errors are small scale (for example, a typographical error that does not affect the substantive meaning);
 - the errors are obvious;
 - the text and location of the corrections are equally obvious; and
 - the corrections are small scale.

Correction on making, registering and publication – process, criteria and role of SI Registrar

6. Your correspondence refers to ‘correction on making’ and ‘correction on publication’, both of which are terms of convenience used by the Government and therefore also the Committee, but not entirely accurate descriptions of the point at which corrections are made. I cover this in more detail below, but the net result of both is the same – the mistake is remedied before publication and ensures that the corrected SI is available in printed form, without an additional correction slip, and the digital version on legislation.gov.uk reflects the final form of the SI.
7. ‘Correction on making’ happens before the SI has been made by the relevant Minister. If the correction is considered to be of the type which could be dealt with by a correction slip (usually a matter which is discussed with the SI Registrar subject to their availability) or is a matter which the Minister has committed to remedy before making the SI – for example in the Senedd’s consideration of a draft affirmative SI – then the draft SI is corrected before it is submitted for making. The “as made” version is then registered in the usual way.
8. Correction on publication is a term we often use, but in practice refers to correction as part of the registration process. In such cases we follow the guidance at paragraph 4.7.13 of SIP which notes:

If it is in the nature of something that could be covered by a correction slip... this can be remedied.
9. There is very limited time available to do this – generally only a few hours – and is dealt with in discussion with the SI Registrar once the SI has been submitted for registration but before registration has been completed.
10. SIP makes clear that if an SI has been registered but not yet published, the mistakes will need to be remedied after publication (by the appropriate means depending on the nature of the error).

Errors in draft affirmative instruments

11. 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.
12. For more substantive matters, then we will either seek to withdraw and re-lay the instrument or, if time does not permit for that, then we may commit to bring forward an amending instrument.
13. Clearly the approach we need to seek to take depends on the error that has been identified, the urgency with which the instrument needs to be made, and the time available to resolve the matter. It will always be the case that our preferred approach in these cases is to correct the draft instrument and re-lay it before the Senedd, and I am grateful to the Committee for those occasions when they have agreed to expedite their consideration of the revised Statutory Instrument.

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

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style with a horizontal line underneath the name.

Mick Antoniw AS/MS

Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution