

Julie James AM
Leader of the House and Chief Whip

8 May 2018

Dear Julie

Under Standing Order 21.7, we have discretion as to whether to report on subordinate legislation that is not in the form of a statutory instrument.

In 2016, we reported on several such pieces of subordinate legislation, including the ***Charging guidance to Ofwat (the economic regulator of the water sector) 2016 (the 2016 Charging Guidance)***.

The Welsh Government brought the 2016 Charging Guidance to our attention in the same way that statutory instruments are brought to our attention. Further, an **Explanatory Memorandum** was laid with the 2016 Charging Guidance.

However, two similar documents were laid in 2017 that were not brought to our attention in the same way that statutory instruments are brought to our attention. The two documents were the:

- ***Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991 (the Strategic Priorities)***;
- ***Charging Guidance to Ofwat Relating to Developer Charges, Bulk Supply Charges and Access Charges (the 2017 Charging Guidance)***.

These documents appear to us to be just as legislative in character as the 2016 Charging Guidance. For example:

- in respect of the Strategic Priorities, under the Water Industry Act 1991: (a) the Welsh Ministers have a duty to consult on the Strategic Priorities, (b) a draft of the



Strategic Priorities must be laid before the Assembly, (c) the Strategic Priorities cannot be published if the Assembly resolves not to approve the draft within 40 days, and (d) Ofwat has a duty to have regard to the Strategic Priorities;

- in respect of the 2017 Charging Guidance, the same legislative framework applied to the 2017 Charging Guidance as applied to the 2016 Charging Guidance.

As well as not being brought to our attention, no accompanying Explanatory Memorandums were laid.

Then, in 2018, the following two documents were laid and were brought to our attention despite them not being as legislative in character as the 2017 Charging Guidance and the Strategic Priorities:

- *The Security and Emergency Measures (Water Undertakers) Direction 2017;*
- *The Security and Emergency Measures (Water Supply Licensees) Direction 2017.*

No Explanatory Memorandums were laid in respect of these two sets of Directions.

We accept that it is not always easy to determine when something is sufficiently legislative in character to be classed as subordinate legislation. However, we would welcome clarification of your approach to laying subordinate legislation that is not in the form of a statutory instrument, including how you approach the questions of when to draw documents to our attention and when to prepare Explanatory Memorandums.

I am copying this letter to the Chair of the Climate Change, Environment and Rural Affairs Committee.

I look forward to hearing from you.

Yours sincerely,



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

