

Rt Hon Carwyn Jones AM
First Minister of Wales

13 November 2018

Dear Carwyn,

Composite and Joint Statutory Instruments

I am writing in relation to an issue which was first raised by you with the Constitutional and Legislative Affairs Committee of the Fourth Assembly (the Fourth Assembly Committee), namely the making of composite and joint statutory instruments which laid are before the National Assembly for Wales and the Houses of Parliament.

In your letter of 1 November 2011 to the Chair of the Fourth Assembly Committee you stated "the UK Parliament will not scrutinise general statutory instruments in languages other than in English." This line of argument has been used in response to many of our subsequent reports, most recently by the Cabinet Secretary for Energy, Planning and Rural Affairs (letter enclosed).

You will be aware that we have continued to report to the National Assembly, in line with Standing Orders, where such composite or joint statutory instruments are not laid in both the English and Welsh languages. In January, I wrote to Mr Charles Walker MP, the Chair of the House of Commons Procedure Committee to seek clarification on whether there are any barriers to bilingual joint or composite instruments being laid in the House of Commons.

In doing so, I highlighted the fact that we were aware of composite statutory instruments laid before both the National Assembly and the UK Parliament in English only but which nevertheless included some Welsh language text – for example, The Conservation of Habitats and Species Regulations 2017 (SI 2017 No.1012). I also drew attention to the European Qualifications (Health and Social Care Professions) Regulations 2016 (SI 2016 No.1030), made by the UK Government that uses Henry VIII powers to amend a bilingual



Act of the Assembly which, as a consequence, contains many pages of Welsh language text.

On 25 October I received a reply from Mr Walker, in which he states:

“House of Commons officials have considered the matter in detail and advise me that there is no bar in the standing orders, resolutions or practice of the House to prohibit the laying of general statutory instruments before the House of Commons in a bilingual form.”

Mr Walker suggests it would be, in the first instance, the responsibility of the drafting department to vouch for the accuracy of any drafting in a language other than English which is to have statutory effect.

I would be grateful for your observations and views on the implications this will have for preparation of future joint and composite statutory instruments, by 28 November 2018.

My letter to Mr Walker and his reply are enclosed.

This letter is copied to Jeremy Miles AM, Counsel General for Wales.

Yours sincerely,



Mick Antoniw

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.

Enclosed – Letter from the Cabinet Secretary for Environment, Planning and Rural Affairs, 16 October 2018; Letter to the Chair of the House of Commons Procedure Committee, 15 January 2018; Letter from the Chair of the House of Commons Procedure Committee, 25 October 2018



Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion
Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

16

October 2018

Dear Mick

Thank you for your letter of 8 October regarding the Food and Rural Affairs (Miscellaneous Revocations) Regulations. It is with apologies that a statement was not included within the Explanatory Memorandum in relation to why the Statutory Instrument was not made bilingually. As you note it is the Welsh Government's general practice to include this information in the Explanatory Memorandum; this was merely an unintentional oversight on this occasion. I will ensure officials are aware the Committee expects to see this information in the Explanatory Memorandum.

These Regulations were made on a composite basis; and were drafted by the UK Government. Composite statutory instruments are not made bilingually, as Parliament will not consider statutory instruments drafted in any language other than English. It was therefore not considered reasonable or practical to provide this instrument in the Welsh language.

Regards
Lesley

Lesley Griffiths AC/AM
Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

Charles Walker MP
Chair of the Procedure Committee
House of Commons

15 January 2018

Dear Charles

Composite and Joint Statutory Instruments

We often scrutinise as part of our formal role, composite and joint statutory instruments that have been laid before the National Assembly, as well as the House of Commons and House of Lords.

Such statutory instruments will impact on communities across Wales and they can relate to important areas such as the environment, health, social care and water supply and road traffic enforcement.

On every statutory instrument laid before the National Assembly, we are obliged by the requirements of our Standing Orders to report if such instruments are not laid in both the English and Welsh languages. Composite and joint instruments are always laid by the Welsh Ministers in English only and therefore we report to the National Assembly on that basis.

In a letter to our predecessor committee in November 2011, the First Minister said that composite instruments are laid only in English because the UK Parliament will not scrutinise general statutory instruments in languages other than English.



Recent examples of composite statutory instruments that we have scrutinised and that are not made bilingually, include:

- The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution (Amendment) Order 2017 (SI 2017 No. 959)

The Explanatory Memorandum that accompanied the Order stated that, “as a Composite Order, the Instrument will not be bilingual and this position has been confirmed previously by the First Minister, to the Constitutional and Legislative Affairs Committee.”

- The Water Abstraction (Transitional Provisions) Regulations 2017 (SI 2017 No. 1047)

The Explanatory Memoranda that accompanied this statutory instrument indicated that as it applies to both England and Wales, and is subject to approval by the National Assembly and by Parliament, it is therefore not considered reasonably practicable for it to be made bilingually.

We are also aware of composite statutory instruments laid before both the National Assembly and the UK Parliament in English only but which nevertheless do include some Welsh language text. For example, The Conservation of Habitats and Species Regulations 2017 (SI 2017 1012) and The Environmental Permitting (England and Wales) (Amendment) Regulations 2018 (not yet made).

In addition, we have become aware of a statutory instrument—the European Qualifications (Health and Social Care Professions) Regulations 2016 (SI 2016 No. 1030)—made by the UK Government that uses Henry VIII powers to amend a bilingual Act of the Assembly and as consequence contains many pages of Welsh language text.

Some of these instruments are therefore examples of the UK Parliament scrutinising statutory instruments that contain the Welsh language.



In the circumstances I would be grateful if you could confirm whether there are any barriers to bilingual joint or composite statutory instruments being laid in the House of Commons.

This is of course important in the context of the UK's exit from the EU and the scrutiny of subordinate legislation made by UK Ministers arising from the EU (Withdrawal) Bill, whether acting alone in devolved areas under Clause 7 powers or jointly with the Welsh Ministers in devolved areas under Schedule 2 powers.

I am sending similar letters to the Chairs of the Statutory Instruments Committee (House of Commons), the Secondary Legislation Scrutiny Committee (House of Lords) and the Joint Committee on Statutory Instruments.

I look forward to hearing from you soon.

Yours sincerely



Mick Antoniw
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.





Procedure Committee

Journal Office, House of Commons London SW1A 0AA

Tel 020 7219 3351/3319 Fax 020 7219 2269 Email proccom@parliament.uk Website www.parliament.uk

From Charles Walker OBE MP, Chair of the Committee

Mick Antoniw AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

25th /
October 2018

Composite and Joint Statutory Instruments

Thank you for your letter of 15 January. I must first of all apologise for the long time it has taken to reply to you.

I am not party to the advice which formed the basis of the then First Minister's assertion to your predecessor Committee to the effect that the UK Parliament "will not scrutinise general statutory instruments in languages other than English." I understand that the Welsh Government maintains this position and has recently reasserted it.

House of Commons officials have considered the matter in detail and advise me that there is no bar in the standing orders, resolutions or practice of the House to prohibit the laying of general statutory instruments before the House of Commons in a bilingual form. Where there is a statutory requirement to lay material before the House in both languages, or where the Welsh is required in part of the material, it seems odd to assert, as the Welsh Government seems to, that the House of Commons will not scrutinise such material: the principal purpose of requiring such material to be laid is surely to allow it to be examined by parliamentarians as well as to make it available to the general public.

It would in the first instance be the responsibility of the drafting Department to vouch for the accuracy of any drafting in a language other than English which is to have statutory effect.

I cannot of course speak for the current practices of committees of this House which undertake scrutiny of delegated legislation: the degree to which such instruments are examined in detail will depend on the composition of the committees and their staff. You will no doubt be aware of the case where the Joint Committee on Statutory Instruments reported a defect in the Registration of Marriages (Amendment) Regulations 1997 on the grounds of material discrepancies between the English and Welsh forms of the Regulations: the discrepancy was discovered as a result of a close reading of both texts by a Welsh-speaking member of the Committee.

Should the Welsh Government require clarification as to the practices of the House of Commons regarding the laying of papers in languages other than English, and of committees in scrutinising bilingual instruments, I am sure that the officials of the House of Commons Service would be happy to assist.

Y
Laws


Charles Walker OBE MP