

Jeremy Miles AM
Counsel General and Brexit Minister

2 March 2020

Dear Jeremy

Practice in relation to statutory instruments

At our meeting on 24 February 2020 we considered The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020 and The National Park Authorities (Wales) (Amendment) Order 2020. While we did consider Welsh Government responses to the identified reporting points for both statutory instruments during the meeting, we believe two of the issues identified warrant further attention.

First, and as raised during our consideration of The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020 (the 2020 Regulations), the footnote to regulation 1(2) contained an incorrect reference to regulations which have already amended The Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003. Further, the Explanatory Memorandum to the 2020 Regulations states an incorrect coming into force date.

In response to these reporting points, Welsh Government has accepted the typographical error in the footnote and has provided an assurance that the error will be corrected by the Queen's printer by means of a correction slip. With regards to the error in the Explanatory Memorandum, Welsh Government has again accepted the stated coming into force date it refers to is wrong but "do not think that this will cause any detriment".

As a Committee we share your longstanding concerns about the need to improve accessibility to Welsh law. For the majority of people who do not have access to paid-for subscription services provided by private companies, statutory instruments and their accompanying explanatory material published on legislation.gov.uk (and even the Assembly's webpages) are the main source of available information. Furthermore, we are aware that practitioners will often turn to explanatory memoranda in advance of detailed consideration of the specific piece of law. I also draw your attention to our consideration of The Common Agricultural Policy (Direct Payments to Farmers) (Miscellaneous Amendments) (Wales) Regulations 2020. In our report on those



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Regulations we noted that the accompanying Explanatory Memorandum stated the wrong Royal Assent date for the Direct Payments to Farmers (Legislative Continuity) Act 2020. In response, the Welsh Government laid before the Assembly a corrected Explanatory Memorandum. It is for these reasons we believe that, as a matter of principle, where errors are identified within both statutory instruments and their accompanying explanatory material, action should always be taken to correct the mistakes.

The second matter we wish to raise with you relates to the third reporting point in respect of The National Park Authorities (Wales) (Amendment) Order 2020 (the 2020 Order). That reporting point highlights that a regulatory impact assessment (RIA) has not been produced for the 2020 Order. We are aware that paragraph 4.2 of the code made by Welsh Ministers under section 76(1) of the *Government of Wales Act 2006* (relating the carrying out of RIAs in connection with relevant Welsh subordinate legislation) lists exceptions to the Welsh Government's overall policy. However, it was not clear which exception under the code applies in respect of the 2020 Order.

In response to this point, Welsh Government stated that the matter has been considered further and the exceptions in the code do not apply in this case. As such, the Welsh Government proposes that a RIA be carried out.

While we acknowledge the proposed approach, we have concerns about the efficacy and validity of any RIA undertaken after an order (or any other subordinate legislation) has been made. We note that paragraph 4.1 of the code states that an assessment of the impact of any proposed subordinate legislation must be considered when the options for the development of the policy are being considered (emphasis added.)

We are aware that Welsh Government officials have been instructed to review the code this year and, further to my 5 December 2019 letter to Rebecca Evans AM, the Minister for Finance and Trefnydd, I take the opportunity to reiterate that we would be grateful to receive further information on the timescale for the review, and that we look forward to seeing the consultation in due course.

We would be grateful for a response from you at the earliest opportunity which addresses the matters raised above. I am copying this letter to the Minister for Finance and Trefnydd.

Yours sincerely



Mick Antoniw AM

Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English

