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



Llywodraeth Cymru
Welsh Government

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

17 January 2022

Dear Huw,

Thank you for your letter of 3 December 2021 and for the ongoing interest of the Committee in our work to improve the accessibility of Welsh law.

Demands on the Legislative Programme

When I attended the Committee meeting I agreed to write to the Committee to help Members understand the scale of legislative demands on the Government, and to explain the impact of these demands on the Government's legislative capacity.

Taken together, EU exit and the pandemic have placed unprecedented demands on the Government and has affected nearly all parts of the organisation. Our legislative programme is no exception to that. Many of those who would ordinarily have been working on developing Bills for inclusion on the legislative programme have been needed to work on high volume of legislation made to respond to those circumstances.

The pandemic continues to place great pressure on our legislative capacity. Since early February 2020 over 280 items of subordinate legislation have been made by the Welsh Ministers in response to the spread of coronavirus, with over 60 of these having been made since the Senedd elections on 5 May 2021. The Welsh Ministers have used powers available to them not just in the Coronavirus Act 2020 and the Public Health (Control of Disease) Act 1984 but also other Acts across a range of areas. Legislation has been made directly in respect of health and social care as you would expect, but also in respect of a range of other matters – for example relating to the economy, transport, housing, education and local government. This legislation has to be kept under review to ensure it is still proportionate and has had to be changed regularly depending on the level of risk posed to the health service and to the wider public. The speed with which the Regulations have had to be made is unprecedented, which in itself is resource intensive.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Our legislative resources had already faced considerable pressure as a result of EU exit and this continued during the pandemic. As I outlined in the statement on the legislative programme in July, this had involved the Welsh Ministers making over 70 Statutory Instruments and consent for over 200 UK Government Statutory Instruments in devolved areas, up to that point. Although we are not now dealing with the same volumes of subordinate legislation to respond to EU exit, some further instruments have been made since July, such as The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) Regulations 2021, The Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021, and The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) (No. 2) Regulations 2021.

During 2021 the Welsh Ministers made 384 Welsh Statutory Instruments and there were a further 5 Welsh Orders in Council. In addition there were approximately 100 items of subordinate legislation made other than by Statutory Instrument. Of these nearly 500 instruments, 125 items related to coronavirus and (as I have mentioned above) were in addition to the 155 coronavirus related instruments made in 2020.

384 is the highest number of Welsh Statutory Instruments ever made in a year (and by way of comparison the average number per year for the preceding 10 years is 310).

The development of significant and substantive legislation usually takes many months or years of work by technically-skilled members of staff before legislation can be brought before the Senedd. The demands of EU exit and the pandemic required many of these officials to be redeployed away from some of the development work that would otherwise have taken place for primary and subordinate legislation. Unfortunately, the ongoing public health crisis and the amount of time ordinarily needed to go through the policy development process and consultation for primary legislation proposals (in particular), means these impacts will continue to be felt for some time.

This is compounded by the need to respond to the UK Government's legislative programme. As I explained in Committee, there is a need for the Welsh Government to consider each UK Government Bill carefully, and to balance the need to defend the current devolution settlement so far as possible and the principle that we should legislate ourselves here in Wales, with opportunities that may arise to improve the law for citizens of Wales. The demands of this process have also been significant, with the need to consider 14 new Bills so far since May 2021, in comparison with 9 in 2016/17, 6 in 2017/18, 7 in 2018/19, 4 in 2019/20 and 19 in 2020/21. This work has often been unpredictable and we have regularly had to respond to UK Bills or amendments with little advance notice. It is worth noting, however, the impact is considerably less than would be the case if we had made corresponding provision in our own legislation.

These are the circumstances which have constrained our capacity to take forward the legislative programme. As a result, to progress the programme we have had to do more to identify our priorities. Our approach to prioritisation has been to focus our resources on those matters where legislation is essential and is the most effective lever to tackle problematic issues. We have also looked to adopt alternatives to primary legislation where this may be a more efficient or appropriate way of delivering our intended outcomes. It was noted that only one Government Bill was before the Senedd at the time of the Committee hearing (a second has been introduced since on 13 December), but a number of other major Bills are planned for introduction in the spring and summer term. I set these out in my statement in July, and our Programme for Government outlines our legislative intentions for the Sixth Senedd as a whole.

Furthermore, as I explained in my July statement, the Government's programme of legislation also includes important items of subordinate legislation, much of which

contributes to the practical implementation of Acts of Senedd Cymru. As mentioned in Committee, ensuring the implementation of Renting Homes legislation is currently a particular focus for the Government, as are implementation programmes for Acts dealing with curriculum and assessment reform, additional learning needs reform and local government and elections. In total, since the election over 75 items of subordinate legislation have been made, excluding those made in response to the coronavirus and EU exit.

Classifying Welsh law

During the Committee session we also discussed the project to classify Welsh law. This work will serve two purposes. Over the longer term it will provide an indicative structure for the Codes of Welsh law, particularly at the highest level. We expect to see Codes in areas such as housing, education and taxation. Much more immediately though it will be the main mechanism for how we, in conjunction with the team at The National Archives, organise Welsh law on legislation.gov.uk.

We are currently refining the taxonomy that we consulted upon in 2019 (which was developed with future Codes of Welsh law in mind), so that it provides a suitable structure for organising existing Welsh law. In that work we are considering how many levels of sub-topics the classification model should be made up of – in other words, to what level of detail should we break down the subject of education for example? We will also be looking at the terminology used to understand what are the most useful and natural terms for users. We need to engage with people who we would expect to use the new service, as well as existing providers of information (such as those providing subscription services for legislation) to understand how they have developed their classification models. We have already begun this but wish to develop those discussions further. We have also begun initial discussions with The National Archives, who will need to develop the technical infrastructure that sits behind legislation.gov.uk to support this new functionality, as well as ensuring the developments for Wales do not affect the wider operability of their system for other Governments and users.

As I explained to the Committee we expect this work to take place over the next three to six months. This does however depend on our ability to undertake user testing in a safe way in light of the ongoing risks posed by the pandemic, and the availability of others who also need to ensure safe working practices. I will keep the Committee informed of progress.

I will also write to the Committee shortly with more details of our engagement with practitioners on the proposals to modernise the form and structure of Welsh legislation.

Yours sincerely,

A handwritten signature in blue ink, reading "Mick Antoniw". The signature is written in a cursive style and is positioned above a short horizontal blue line.

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