

Mick Antoniw MS
Counsel General

4 June 2024

Dear Mick

Corrections to statutory instruments subject to the draft affirmative scrutiny procedure

As a Committee we welcome your ongoing positive engagement with us as attempts are made on all sides to improve the quality of Welsh-made subordinate legislation and to improve the transparency and accessibility of the legislation-making process.

At our meeting on 13 May 2024 we considered your letter dated 3 May 2024 which responded to some further matters we wrote to you about on 23 April 2024 on the subject of the Welsh Ministers making corrections to statutory instruments subject to the draft affirmative scrutiny procedure prior to their making.

First, we do welcome your statement that the Welsh Government would not seek to make substantive changes as part of the correction prior to making process.

We acknowledge the points you raise in your letter dated 3 May 2024, and the attention you have drawn to statements you have made in previous correspondence to the Committee (specifically on 18 January 2023). We recognise that, in that earlier correspondence from 2023, you suggested that various things could come into play when a Welsh Minister is considering correcting a draft instrument prior to making, including that the correction is considered to be of the type which could be dealt with by correction slip or is a correction which the Minister has committed to remedy before making the statutory instrument.

However, as you highlight in your recent letter, you also told the Committee in January 2023 that corrections prior to making could also include ones which would not be suitable for a correction slip.

As such, we hope you will appreciate our view that more clarity is still required on the specific criteria the Welsh Government applies when deciding whether a particular correction is not substantive and

thus appropriate to make prior to making a statutory instrument. We would therefore be grateful if you could provide us with those criteria and/or explain how the Welsh Government assesses whether or not a proposed correction amounts to a “substantive” change.

Sharing this information would greatly assist us in our consideration of Welsh Government responses to our reports on Statutory Instruments, not least because having the criteria would mean we would likely only seek further input from the relevant Welsh Minister in the unlikely event that a correction appeared out of scope of those criteria. We believe it would also further increase transparency and accountability in relation to the correction prior to making process, alongside the Welsh Government’s previous commitment to inform the Committee of any such corrections.

In a letter to you on 23 April 2024, my predecessor highlighted concerns the Committee had with comments made by the then Minister for Climate Change during the debate on The Packaging Waste (Data Collection and Reporting) (Wales) (Amendment) Regulations 2024 (the Packaging Waste Regulations). We said we were unclear why the Welsh Government may be of the view, as suggested by the Minister, that a ‘technical’ change would automatically be minor, particularly when perceived ‘technical’ changes (such as the addition of a comma) can change the meaning of text. We were also concerned by the implication within the Minister’s remarks that *any* correction will not be substantive as long as it does not alter the policy intent of the instrument.

We recognise that the Welsh Minister responsible for the Packaging Waste Regulations has now changed, and the Cabinet Secretary for Climate Change and Rural Affairs has been made aware of our exchange of correspondence. Nonetheless we would welcome your views, given your responsibilities in overseeing the work of the Legal Services Department, on whether the then Minister for Climate Change’s comments reflect the Welsh Government’s policy on correction prior to making and, if so, the basis on which the Welsh Government considers this to be appropriate and *intra vires*.

I will again re-iterate a point made in previous correspondence that the Committee’s scrutiny of statutory instruments is genuinely undertaken in the spirit of trying to be a constructive critical partner in the legislation-making process.

I am copying this letter to the Cabinet Secretary for Climate Change and Rural Affairs.

Yours sincerely,



Mike Hedges

Chair